(2)

91-609

No. 91-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

F. & J.M. CARRERA, INC.; F. CARRERA HNO., INC.; AMERICAN CHEMICAL, INC.; RECAITO, INC.,
Petitioners

v.

CARLOS M. PIÑEIRO CRESPO, ZENAIDA CUBAS, AND THEIR CONJUGAL LEGAL PARTNERSHIP JOAQUIN RODRIGUEZ GARCIA, CARMEN L. BENITEZ, AND THEIR CONJUGAL LEGAL PARTNERSHIP,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

APPENDIX TO PETITION FOR CERTIORARI

HECTOR SALDAÑA-EGOZCUE
Counsel of Record
GRACIANA M. GONZALEZ-HERNANDEZ
SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, Puerto Rico 00918
Counsel of Petitioners

September 12, 1991

PUBLISHING RESOURCES, INC. SAN JUAN, PUERTO RICO

150

INDEX TO THE APPENDIX

(Translation)

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑERO CRESPO, et al. *
Plaintiffs-Appellees *

vs. * No. RE-91-146 REVIEW

AMERICAN CHEMICAL CORP * et al. *
Defendants-Appellants. *

RULING

San Juan, Puerto Rico, June 14, 1991.

Regarding the above motion for reconsideration, it is denied.

Agreed to by the Court and certified by the acting Chief Clerk. Associate Justices Rebollo López and Andreu García would reconsider. Associate Justices Negrón García and Alonso Alonso abstained.

(Sgd.: Illegible)
Heriberto Pérez-Ruiz
Acting Chief Clerk

Stamp affixed
United States District Court
For the District of Puerto Rico
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To be a correct translation
made and/or submitted by the
interested party
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑERO CRESPO, et al.	*	
Plaintiffs-Appellees	*	
vs.	* No. RE-91-146	REVIEW
AMERICAN CHEMICAL CORPORATION	*	
and/or AMERICAN CHEMICAL, INC., et al.	*	
Defendants-Appellants.	*	

Special Summer Court composed by its president, Associate Justice Rebollo López, and Associate Justices Ms. Naveira de Rodón and Mr. Andreu García.

RULING

San Juan, Puerto Rico, July 8, 1991.

Regarding the motion dated June 25, 1991, to return mandate and the motion dated July 3, 1991 for protection of jurisdiction, both filed by defendants-appellants, they are denied.

Agreed to by the Court and certified by the Chief Clerk.

(Sgd.: Illegible)
Francisco R. Agrait Lladó
Chief Clerk

Notified on:
July 9, 1991
By: (Sgd.: Illeg.)

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United States District Court
For the District of Puerto Rico

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Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑERO CRESPO, et al.	*	
Plaintiffs-Appellees	*	
vs.	* No. RE-91-146	REVIEW
AMERICAN CHEMICAL CORPORATION, et al.	*	
Defendants-Appellants.	*	

Special Summer Court composed by its President, Associate Justice Rebollo López, and Associate Justice Ms. Naveira de Rodón and Associate Justice Mr. Andreu García.

RULING

San Juan, Puerto Rico, August 2, 1991.

Regarding the above motion for reconsideration, denied. The ruling is to be abided by.

Agreed to by the Court and certified by the Chief Clerk.

Francisco R. Agrait Lladó
Chief Clerk

Notified on:
August 5, 1991
By: (Sgd.: Illeg.)

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United States District Court
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Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑERO CRESPO, et al.	*		
Plaintiffs-Appellees	*	IN RE:	
vs.	*	No. RE-91-146	REVIEW
AMERICAN CHEMICAL CORPORATION, et al.	*		
Defendants-Appellants.	*		

MOTION FOR RECONSIDERATION

TO THE HONORABLE SUPREME COURT:

Come now defendants-appellants, represented by the undersigned attorney, and very respectfully state, allege and pray:

1. On May 10, 1991, this Honorable High Court issued a Decision denying the motions for reconsideration filed on April 22, 1991 by defendants-appellants. Said Decision was notified on May 13, 1991.

2. Defendants-appellants and the main stockholders of these defendants, José M. Carrera Rolán, Dr. Rafael A. Blanes, Antonio Blanes Carrera and Syra Blanes de Ortiz, respectfully would like this Honorable High Court to reconsider its refusal to issue the writ of review requested based on the following:

A. THE RIGHT OF DEFENDANTS-APPELLANTS TO HAVE THIS HONORABLE SUPREME COURT REVIEW THE JUDGMENT ISSUED BY THE SUPERIOR COURT, SAN JUAN PART, IN CIVIL CASE NO. 85-1797, IS GUARANTEED BY THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO, AND NOT TO REVIEW SAID JUDGMENT WOULD ENTAIL DEPRIVING DEFENDANTS-APPELLANTS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

This Honorable Supreme Court was created by means of the Constitution of the Commonwealth of Puerto Rico and it was

expressly provided that it would be the court of last resort in Puerto Rico.

The essential duty as the court of last resort is to review the judgments of lower courts. It was so acknowledged by this Honorable High Court in *Chamberlain v. Delgado*, 1960, 82 DPR 6, 13 (1960).

The criterion of the Judicial Branch Commission of the Constitutional Convention was to guarantee in the Constitution itself the existence of a court of last resort. See Report of the Judicial Branch Commission, *Diary of Sessions of the Constitutional Convention of Puerto Rico*, p. 2609.

The guarantee of a court of last resort constitutes the guarantee of the right to appeal. This is evidenced as such by the debate of the Constitutional Convention when the delegate, Mr. García Méndez, discussing whether this Honorable Supreme Court should have the original jurisdiction to take cognizance of issues of constitutional nature, stated that: "In no way does this exclude the rights of appeal that are already established in the first line of Section 5 of the draft."[1]

In that the right to appeal has been authorized in our Constitution, it is the duty of this Honorable Supreme Court as the court of last resort, to review **all** the judgments of the lower court, regardless of the nature of the cause, since the Constitution does not establish nor can it establish any distinction regarding the causes that are entitled to an appeal, in that the right to appeal belongs to the litigating citizen and not to the cause that is the subject of the litigation.

Performance of the reviewing function as the court of last resort means that this Honorable Supreme Court should review all judgments that are under appeal before it, in depth and on the merits. This entails a review by this Honorable Supreme Court of the trial court's record through the total or partial transcript of the oral

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1 Section 5 of the draft became Section 3 of Article V of the Commonwealth of the Puerto Rico Constitution, which reads as follows:

"**The Supreme Court shall be the court of last resort in Puerto Rico** and will consist of a chief justice and four associate justices. The number of its judges may only be changed by law approved at the request of the Supreme Court itself." (Emphasis provided.)

evidence or a stipulated statement of the evidence and to allow the parties to file briefs on the issues brought forth.

The refusal to review the record of the trial court and to receive briefs on the issues brought forth constitutes deprivation of the right to appeal. When the judgment is then issued unreviewed by the court of last resort despite the fact that the right to appeal authorized by our Constitution has been claimed, the citizen is deprived of his/her property without the due process of law guaranteed by the Constitution, in violation of Section 7 of Article II of the Commonwealth of Puerto Rico Constitution.

Based on the aforementioned, defendants-appellants, exercising their Constitutional right to appeal, ask this Honorable Supreme Court to perform its constitutional duty to review the judgment issued by the Puerto Rico Superior Court, San Juan Part, in Civil Case No. 85-1797, thereby complying with the due process of law.

B. WHEREFOR, LAW 115 OF JUNE 26, 1958 VIOLATES THE RIGHT TO APPEAL GUARANTEED BY THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO.

To solve the congestion and delay of litigation in Puerto Rico, the legislature approved Law No. 115 of June 26, 1958. By means of said law the absolute right to appeal was preserved in criminal cases and in cases where a substantial constitutional issue is brought forth under the protection of the Constitution of the United States or of Puerto Rico.

For the remaining judgments, the legislature provided that they may be reviewed at the request of the injured party by this Honorable Supreme Court by means of a writ of review to be issued **discretionally**.

As we have heretofore stated, the Constitution of the Commonwealth of Puerto Rico guarantees the right to appeal by means of the creation of a court of last resort. Therefore, the legislature does not have the authority to restrict the jurisdiction of this Honorable Court or to grant discretional authority on its appellate duties. Our Constitution authorized and sealed the duty of this Honorable Supreme Court, as the court of last resort, to review all appealed decisions of the trial court.

Even when we sustain the unconstitutionality of Law No. 115, supra, on the grounds stated hereinbefore, as an alternate source of grounds we sustain that the discretion that said law grants this Honorable Court in issuing writs of review is limited to defective and frivolous appeals.

In analyzing the report of the Commission on Juridical Matters of the House of Representatives on House Bill 342 and House Bill 476, as well as from the debate of the legislative assembly, it is clear that the sole and exclusive purpose of granting discretional authority to this Honorable Supreme Court to issue writs of review was to decrease the accumulation of work on the Supreme Court caused by filing **defective** and **frivolous** petitions, empowering it to determine **a priori** whether or not there are merits for the review. See also *Andino v. Fajardo Sugar Co.*, (1961) 82 DPR 85, 92.

We feel very respectfully that it is enough for one member of this Honorable Supreme Court to feel that the appeal warrants the review for it not to be deemed defective or frivolous and then be subjected to discretional rejection. For an appeal to be categorized as frivolous it must necessarily be devoid of any merit whatsoever. The deference warranted by the finding of each justice of this Honorable Court when a single one of them finds that an appeal has merits, destroys the possibility for it to be deemed frivolous. *Otero Fernández v. Court Marshal*, 116 DPR 733 (1985); *Fournier v. González*, 80 DPR 353 (1958).

In the instant case, not one but all of the five justices who have participated in it, feel that there are merits for the review by having voted in favor of issuing the writ of review. This is reason for the instant case not to be deemed defective or frivolous. In that the elements that allow the exercise of discretion by this Honorable Supreme Court are not present, the issuance of the writ of review ceases to be discretional.

This leads us to conclude in addition that the last paragraph of Rule 3(a) of the Supreme Court By-laws in which a vote of at least half of the justices who take part in issuing a writ does not adjust to the intention of the legislator when Law No. 115, supra, was approved, since the discretion was granted solely for defective and frivolous petitions.

In accordance with the aforementioned and in that the petition for review of the above-captioned case is not defective or frivolous, the issuance of the requested writ of review is in order.

C. RULE 18 OF THE BY-LAWS OF THE PUERTO RICO SUPREME COURT VIOLATES THE RIGHT TO APPEAL GUARANTEED BY THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO.

Rule 15.1 of the By-laws of the Supreme Court approved on July 29, 1958, as a result of the approval of Law No. 115, supra, provided the grievant who resorted to this Honorable High Court the right to file a total or partial transcript of the oral testimony presented before a trial court or a stipulated statement of said testimony. It was not until said transcript or stipulated statement was filed that this Honorable Supreme Court of Puerto Rico would then consider issuing the writ of review. This mechanism certainly provided the litigant the opportunity of having this Honorable Court examine the record of the trial court before exercising the discretion conferred upon it in Law No. 115, supra.

In the Supreme Court By-laws approved on November 30, 1966 and effective on January 1, 1967, the right to a transcript of the evidence, as had been in effect since 1958, was eliminated as a result of approving the aforementioned law. Elimination of the right to file a transcript of the oral evidence prior to exercising the discretion to issue a writ of review constitutes a violation of the due process of law guaranteed by the Constitution of the Commonwealth of Puerto Rico, in that it curtails the opportunity to persuade this Honorable Supreme Court to issue the writ of review.

Whereupon, we respectfully feel that this Honorable Court's refusal to permit the transcript of the oral evidence as well as the provisions of Rule 18 of the Supreme Court By-laws violate defendants-appellants' due process of law.

D. ASSUMING THAT THE JUDGMENT OF THE TRIAL COURT WAS CORRECT AND THAT IT INVOLVED A TERM OBLIGATION, THE TRIAL COURT ERRED BY IMPOSING INTEREST FOR DEFAULT ON THE AMOUNT OF $290,000.00 FROM OCTOBER 16, 1984.

In our petition for review, we argued to this Honorable High Court that the trial court erred by determining that interest for default was

appropriate. The Superior Court Judgment is so full of incongruities, that even assuming that the judgment was correct in its finding that it concerned a debt to be satisfied in installments, with that supposition, the deciding Court would also have erred in the manner in which he or she imposed the interest for default.

Pursuant to Article 1053 of the Civil Code, 31 LPRA 3017, it indicates that he who incurs default is one who is obligated to relinquish a case **from the time that the creditor demands compliance in or out of court.** In addition, the rule that requires that the obligation must be due, liquid, and that the debtor must be in arrears in his or her compliance thereof in order for default to exist, is highly recognized. To that effect, the amount owed must be true and the tardiness in the payment must be culpable for the debtor to be ordered to compensate for default.

Assuming that in the instant case there was default and that it concerns a term obligation, as provided in the Judgment, it is impossible for the interest on the lump sum to start counting as of October 16, 1984.

On October 16, 1984, plaintiff claimed its corresponding participation as of said date, alleging that it was equal to 25% of $175,000.00. Given that at that moment there was a genuine controversy about the amount owed, the interest for default should not be imposed until the judgment is issued, on which date, if the debt is not paid, the default would begin, since it is only after the judgment is issued that it would concern a given and liquid debt.

In addition, assuming that it was a term obligation, as determined by the Court in the judgment, the remaining installments cannot be demanded until their due date. Since the rest of the installments were not due as of October 16, 1984 and/or had not been claimed, it is not proper to impose the interest for default until the judicial interpellation by means of filing the complaint on the amounts owed as of the date of filing, as well as it is improper to impose interest for default on the amounts not due at the time of filing the complaint until the judgment has been issued. The interest on amounts due after filing the complaint may only be imposed from the time that they were due and after they have been claimed; that is, in this case, as of the judgment.

In *Cajigas v. Prats Estate*, 5 DPR 14, p. 151 (1904), the Supreme Court confirmed that term obligations are due as of the moment when they transpire.

It is important to remember that the term obligation consists of subordinating the demandability of a right to compliance with a future event for which compliance cannot be demanded until the date determined by the agreement or by the act that generated the obligation. *Guaroa Velázquez*, p. 283.

On the other hand, we emphasize that the appearing party confirms its position that it concerns an obligation of suspendable nature and not a term obligation.

E. CONCLUSION.

The parties actually affected by this judgment are the stockholders of the defendant corporations. These people, namely, **José M. Carrera Rolán, Dr. Rafael A. Blanes, Antonio Blanes Carrera** and **Syra Blanes de Ortiz**, are members of a family who for over one hundred (100) years have been contributing to the financial and social development of Puerto Rico.

These people have always acted with the highest moral and ethical sense. The judgment issued by the trial court, which is contrary to law and does not represent the most rational and equitable balance of the evidence presented, as we have clearly and repeatedly demonstrated, hurts the values and principles that have always guided these citizens in their social and business dealings. But they are more hurt by the fact that this Honorable Supreme Court refuses, for no reason, to review a judgment that is clearly erroneous and unjust.

Take into account that when these people, through F. & J.M. Carrera, Inc., acquired American Chemical Corporation, they acquired an **insolvent** company that did not have much more financial life left. The investment of the Carrera and Blanes families saved the employment of over forty (40) workers and made viable the development of a Puerto Rican industry.

Take into account that the amount of the judgment issued by the trial court, when interest, costs and fees are added, is today over $525,000.00. When comparing this figure with the total profits of American Chemical from 1982 until September 1988, when the Carrera and Blanes families ceased to have control over it, we see that the amount of the judgment is equivalent to ***129%*** of said profits,

since they amounted to $405,815.00. This means that the plaintiffs-appellees would receive the company's total profits and the defendants-appellants would receive a loss, despite the fact that they were the ones who risked their capital.

Take into account that the total investment that plaintiffs-appellees had in American Chemical Corp. was no more than **$5,000.00**; that at the time of the closing, despite the fact that the company had failed in their hands, they received **$77,394.00** and that with the judgment issued by the trial court they would receive an additional $525,000.00 without having invested or risked anything substantial.

Finally, we wish to leave in the thoughts of the justices of this Honorable Court two points on which we respectfully request that you reflect when considering the requested revision again.

i. There is no fundamental duty comparable to the duty of justice in a democratic society.[2] To this we must add that justice ultimately is in the hands of this Honorable Court and, no justice is done without having the opportunity to examine the trial court record by means of the transcript of the evidence and the analysis of the brief prepared on the issues brought forth.

ii. Article 225 of the Puerto Rico Penal Code establishes in its second paragraph that he who commits perjury is any person who has sworn to testify the truth, who gives two or more testimonies, statements, depositions or certifications that are irreconcilable between each other. Said paragraph further provides that in this case it would be unnecessary to establish the truthfulness or falseness of the events involved.

If the existence of irreconcilable statements constitutes a crime to deprive a person of his or her freedom without it being necessary to establish the falsehood of the events involved, the existence of irreconcilable statements of a witness on whose statements the trial court has based his or her findings of fact is sufficient reason to review the decision of the trial court.

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2 Propounded by the Chairman of the House of Representatives, the Hon. Ernesto Ramos Antonini, in his speech before said body on March 15, 1957.

WHEREUPON, we very respectfully request this Honorable Supreme Court to reconsider the Decision of May 10, 1991 and to review the judgment issued by the Puerto Rico Superior Court, San Juan Part, in Civil Case No. 85-1797.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on May 15, 1991.

I CERTIFY: That I have issued a copy of the present motion, by hand, to A. J. Bennazar Zequeira, Esq., at his office on the 15th Floor, Office 1501, Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (Sgd.: Illegible)
HECTOR SALDAÑA
EGOZCUE
Bar Member No. 6959

Stamp affixed
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For the District of Puerto Rico
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made and/or submitted by the
interested party
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO ET AL	*		*	
*	*			
*	*			
Plaintiffs-Appellees	*	NO.	*	
	*	RE91-146	*	
v.	*		*	IN RE:
	*		*	
AMERICAN CHEMICAL CORPORATION AND OTHERS	*		*	REVIEW
	*		*	
	*		*	
Defendants-Appellants	*		*	
----------	*		*	_____

MOTION

TO THE HONORABLE SUPREME COURT:

Comes now defendant-appellee represented by the undersigned attorney and very respectfully states, alleges and prays:

1. On May 15, 1991 the party appearing herein filed with this Honorable Higher Court a motion for reconsideration wherein it was asserted that the right of defendant-appellant to have this Honorable Supreme Court review the judgment entered by the Superior Court, San Juan Part, in Civil Case No. 85-1797 is guaranteed by the Constitution of the Commonwealth of Puerto Rico, and the non-review of said judgment would entail the deprivation of defendant-appellants' property without due process of law. That therefore, Law 115 of June 26, 1958 and Rule 18 of the Regulations of the Puerto Rico Supreme Court violate the right of appeal guaranteed in the Constitution of the Commonwealth of Puerto Rico and in the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

2. During the after of June 14, 1991, the undersigned attorney, Héctor Saldaña Egozcue, personally called by telephone, on at least two occasions, the Clerk of this Honorable Court to verify if any ruling had been issued with respect to the above-captioned case. The answer to said question was in the negative. During the morning of Monday, June 17, 1991, the undersigned attorney, Héctor Saldaña Egozcue, again called the Clerk of this Honorable Court to verify whether or not this Honorable Supreme Court had handed down a ruling with respect to the above-captioned case. The answer on this occasion was the same as the former, that is, that no ruling had yet been issued.

3. At noon of the same 17th of June, the undersigned attorney, Héctor Saldaña Egozcue, left to go to the city of Miami, Florida, to attend the final hearings of a case being arbitrated before the American Arbitration Association. On returning to the office on Monday, June 24, 1991, the undersigned Héctor Saldaña Egozcue called the Clerk of this Honorable Court to find out if any ruling had been issued with respect to this case, since there was nothing regarding this case in the correspondence of our office received up until Friday, June 21, 1991. On said occasion, the undersigned Héctor Saldaña Egozcue was informed that the Mandate on the case in reference had been sent to the Puerto Rico Superior Court, San Juan Part, on Friday, June 21, 1991, given the fact that this Honorable Supreme Court had handed down a ruling on June 14, 1991 dismissing the motion for reconsideration. He was likewise informed that said ruling had been notified by mail on June 17, 1991. We immediately sent a messenger to the Clerk's Office of this Honorable Court to obtain a copy of the aforesaid ruling. In the afternoon hours two copies of the Ruling which had been notified by mail since June 17, 1991 were then received. See **Appendix A.**

4. In spite of the issues raised in the motion for reconsideration, as summarized in Paragraph 1 of the instant motion, this Honorable Higher Court has refused to review the judgment entered in Civil Case Number 85-1797 of the Superior Court, Puerto Rico Part, therefore, defendant-appellant respectfully feels that it has been deprived of the right of appeal as guaranteed by the Constitution of the Commonwealth of Puerto Rico. It likewise holds that the law which empowers this Honorable Supreme Court to exercise discretion in the

issuance of a writ of review, as well as Rule 18 of the Regulations of the Supreme Court of Puerto Rico violate the constitutional right of appeal, as guaranteed by the Constitution of the Commonwealth of Puerto Rico. Based on the above, defendant-appellant intends to petition the United States Supreme Court, to declare, through a writ of Certiorari, that the Constitution of the Commonwealth of Puerto Rico guarantees the right of appeal before this Honorable Supreme Court in civil cases; to declare Law No. 115 of June 26, 1958 unconstitutional inasmuch as it violates the right of appeal as guaranteed by the Constitution of the Commonwealth of Puerto Rico; and to declare Rule 18 of the Regulations of the Puerto Rico Supreme Court unconstitutional, as it hinders the right to appeal as guaranteed by our Constitution. Based on the above, the party appearing herein also intends to petition the United States Supreme Court to find that the execution of the judgment entered in Civil Case No. 85-1797 of the Puerto Rico Superior Court, San Juan Part, without first having been reviewed by this Honorable Higher Court, would entail the deprivation of the property of defendant-appellant without due process of law which it is guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

5. The United States Supreme Court has jurisdiction to issue a writ of Certiorari in the case before us, as provided in 28 USCA Section 1258. *Ubiñas v. Medina*, 89 DPR 666 (1963). For its part, Rule 45 of the Regulations of this Honorable Court in its subsection (e) states that in any case in which a ruling of this Honorable Higher Court may be reviewed by the United States Supreme Court through a writ of Certiorari, at the request of a party, this Honorable Court may stay the sending of the Mandate to the lower court. To that effect, the afore-cited case of *Ubiñas v. Medina, supra*, establishes the main factors which must be considered for this Honorable Higher Court to rule whether it is definitely called for to order the stay of Mandate and hence delay the execution of judgment. Said factors are the following:

(A) Real, unavoidable and irreparable damages which may be caused the petitioner together with the public and private interests involved, including damages to the opposing party.

(B) A reasonable opportunity for the United States Supreme Court to issue the writ of Certiorari for which a petition is being

attempted. To that effect, the importance and novelty of the issues raised should be considered, as well as the drastic nature of the judgment and the existence of similar controversies in other cases pending before this same court, the existence of substantial reasons which show that the findings of facts of the lower courts are clearly erroneous, the presence of a constitutional issue and the considerations of natural justice or equity involved in the case. *Ubiñas v. Medina, supra,* pp. 671-672.

In the case before us, the damages that the appearing party would suffer if the judgment were executed are obvious. What is more, if this Honorable Higher Court proceeded with its Mandate, the controversy presented before the United States Supreme Court by means of a petition of Certiorari, would become moot. Defendant-appellant would receive no damage at all since the total sum of the award is duly bonded through a bond approved by the lower court.

Certainly, the refusal of this Honorable Higher Court to review the case in reference raises constitutional issues which drastically affect the proceedings before this Honorable Court, as it also raises new issues of great import. The reasons of a constitutional nature demonstrate the "reasonable opportunity" for the United States Supreme Court to issue the writ of Certiorari.

6. In consideration for the fact that the party appearing herein did not receive a copy of the Ruling entered on June 14, 1991 before the Mandate was sent to the Superior Court, San Juan Part, it is very respectfully interested in the Honorable Supreme Court ordering the lower court to return the aforesaid Mandate and the same being stayed until a final ruling on the appeal of Certiorari to be presented before the United States Supreme Court is handed down.

WHEREFORE, it is very respectfully prayed that this Honorable Supreme Court grant the instant motion and, consequently, issue an order addressed to the Puerto Rico Superior Court, San Juan Part, directing it to return to this Honorable Higher Court the Mandate sent on June 21, 1991 and that the same be stayed pursuant to what is prayed for herein.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico , this 25th day of June, 1991.

I CERTIFY: That I have sent by hand, a copy of the instant motion to Atty. A.J. Bennazar Zequeira at his office located on the 17th Floor, Suite 1700 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (signed illegibly)
HECTOR SALDAÑA
EGOZCUE
BAR ASSOC. NO. 6959

(signed illegibly)
GRACIANA M. GONZALEZ
HERNANDEZ
BAR ASSOC. NO. 10338

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Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO 01 OF 01
GENERAL COURT OF JUSTICE
SUPREME COURT

PIÑEIRO CRESPO, CARLOS M Y LA S.L.G. - APPELLEE

VS.

AMERICAN CHEMICAL CORPORATION
ET AL - APPELLANT

CASE: RE-91-0146 ORIG. CASE: 85-1797 COLLECTION OF MONEY

GONZALEZ HERNANDEZ, GRACIANA M. CIVIL ACTION
BANCO POPULAR CENTER OR OFFENSE
SUITE 1031
HATO REY, P.R.000000918

NOTICE

I CERTIFY THAT IN RELATION TO THE MOTION FOR RECONSIDERATION THE COURT ENTERED THE ATTACHED RULING :

BENNAZAR ZEQUEIRA A J-BCO POPULAR CENTER
BLDG-15TH FLOOR SUITE 1501-HATO R.
SALDANA EGOZCUE HECTOR-BANCO POPULAR
CENTER-SUITE 1031-HATO REY, P.R.
MADAM CLERK-SUPERIOR COURT-JUDICIAL
CENTER-HATO REY, PR..-009

SAN JUAN , PUERTO RICO THIS 17TH DAY OF JUNE 1991

FRANCISCO R. AGRAIT
LLADO
CLERK OF THE COURT
(illegible initials)
DEPUTY CLERK

[envelope:]
Commonwealth of Puerto Rico
Supreme Court
Clerk's Office P.R.
P. O. Box 2392
San Juan, Puerto Rico 00902-2392

[postmark:]
SAN JUAN U.S.POSTAGE
JUN 17'91 .29

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SALDAÑA & VALLECILLO
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For the District of Puerto Rico
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Signed Illeg.
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Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO — 01 OF 01
GENERAL COURT OF JUSTICE
SUPREME COURT

PIÑEIRO CRESPO, CARLOS M Y LA S.L.G. - APPELLEE

VS.

AMERICAN CHEMICAL CORPORATION
ET AL - APPELLANT

CASE: RE-91-0146 ORIG. CASE: 85-1797 COLLECTION OF MONEY

SALDANA EGOZCUE HECTOR
BANCO POPULAR CENTER
SUITE 1031
HATO REY, P.R.000000918

CIVIL ACTION OR OFFENSE

NOTICE

I CERTIFY THAT IN RELATION TO THE MOTION FOR RECONSIDERATION THE COURT ENTERED THE ATTACHED RULING :

BENNAZAR ZEQUEIRA A J-BCO POPULAR CENTER BLDG-15TH FLOOR SUITE 1501-HATO R.
GONZALEZ HERNANDEZ, GRACIANA M. -BANCO POPULAR CENTER BLDG. -SUITE 1031-
MADAM CLERK-SUPERIOR COURT-JUDICIAL CENTER-HATO REY, PR..-009

SAN JUAN , PUERTO RICO THIS 17TH DAY OF JUNE 1991

FRANCISCO R. AGRAIT
LLADO
CLERK OF THE COURT
(illegible initials)
DEPUTY CLERK

[envelope:]
Commonwealth of Puerto Rico
Supreme Court
Clerk's Office P.R.
P. O. Box 2392
San Juan, Puerto Rico 00902-2392

[postmark:]
SAN JUAN U.S.POSTAGE
JUN 17'91 .29

Res.

RECEIVED
SALDAÑA & VALLECILLO
91 JUN 24 P 4:37

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO ET AL	*		*
	*		*
Plaintiffs-Appellees	*NO.		*
	*	RE91-146	*
v.	*		* IN RE:
*	*		
AMERICAN CHEMICAL CORPORATION ET AL	*		* REVIEW
	*		*
	*		*
Defendants-Appellants	*		*
----------	*		*

INFORMATIVE MOTION

TO THE HONORABLE SUPREME COURT:

Comes now defendant-appellant represented by the undersigned attorney and very respectfully states, alleges and prays:

1. That the Mandate of the above-captioned case was sent to the lower court on June 21, 1991.

2. The notice concerning the above sent to the undersigned attorneys is dated June 21, 1991 and the envelope in which the same was mailed is also stamped on that same date. Nevertheless, the aforesaid notice was received at the undersigned attorneys' offices on July 2, 1991. See **Appendix A.**

WHEREFORE, it is very respectfully prayed that this Honorable Supreme Court take notice of the above-stated when it considers the motion filed by the party appearing herein on June 25, 1991.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of July, 1991.

I CERTIFY: That I have sent by regular mail, a true and correct copy of the instant motion to Atty. A.J. Bennazar Zequeira at his

office located on the 17th Floor, Suite 1700 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (signed illegibly)
HECTOR SALDAÑA
EGOZCUE
BAR ASSOC. NO. 6959

(signed illegibly)
GRACIANA M. GONZALEZ
HERNANDEZ
BAR ASSOC. NO. 10338

APPENDIX A

COMMONWEALTH OF PUERTO RICO 01 OF 01
GENERAL COURT OF JUSTICE
SUPREME COURT

PIÑEIRO CRESPO, CARLOS M Y LA S.L.G. - APPELLEE
VS.
AMERICAN CHEMICAL CORPORATION
ET AL - APPELLANT

CASE: RE-91-0146 ORIG. CASE: 85-1797 COLLECTION OF MONEY

SALDANA EGOZCUE HECTOR
BANCO POPULAR CENTER
SUITE 1031
HATO REY, P.R.000000918

CIVIL ACTION OR OFFENSE

NOTICE

I CERTIFY THAT IN RELATION TO THE PETITION FOR REVIEW THE COURT ENTERED THE ATTACHED RULING :

******** NOTE TO ATTORNEYS AND PARTIES ********

MANDATE SENT TO THE LOWER COURT
THIS LETTER IS O N L Y FOR YOUR INFORMATION

BENNAZAR ZEQUEIRA A J-BCO POPULAR CENTER BLDG-15TH FLOOR SUITE 1501-HATO R.
GONZALEZ HERNANDEZ, GRACIANA M. -BANCO POPULAR CENTER BLDG. -SUITE 1031-
MADAM CLERK-SUPERIOR COURT-JUDICIAL CENTER-HATO REY, PR..-009
MADAM CHIEF CLERK - SUPER.OR COURT - SAN JUAN PART-SAN JUAN,

SAN JUAN , PUERTO RICO THIS 21ST DAY OF JUNE 1991

FRANCISCO R. AGRAIT
LLADO
CHIEF CLERK
(illegible initials)
DEPUTY CLERK

[envelope:]
Commonwealth of Puerto Rico
Supreme Court
Clerk's Office
P. O. Box 2392
San Juan, Puerto Rico 00902-2392

RE - 91 - 146 - NA.

[postmark:]
SAN JUAN U.S.POSTAGE
JUN 21'91 .29
P.R.

RECEIVED
SALDAÑA & VALLECILLO
92 JUL 2 P 12:54

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO ET AL	*		*	
	*		*	
Plaintiffs-Appellees	*	NO.	*	
	*	RE91-146	*	
v.	*		*	IN RE:
	*		*	
AMERICAN CHEMICAL CORPORATION ET AL	*		*	REVIEW
	*		*	
	*		*	
Defendants-Appellants	*		*	
----------	*		*	----------

MOTION FOR PROTECTION OF JURISDICTION

TO THE HONORABLE SUPREME COURT:

Comes now defendant-appellant represented by the undersigned attorney and very respectfully states, alleges and prays:

1. On June 25, 1991, defendant-appellant filed with this Honorable Supreme Court a motion praying that an order be entered addressed to the Puerto Rico Superior Court, San Juan Part, to return to this Honorable Higher Court the Mandate sent on June 21, 1991 and that the same be stayed as prayed for in said motion.

2. A copy of said motion was notified to the Puerto Rico Superior Court, San Juan Part, in Civil Case Number 85-1797, and said court was prayed to abstain from acting on the Mandate sent on June 21, 1991 until such time as this Honorable Higher Court had ruled on the aforesaid motion. See **Appendix A.** On June 26, 1991, the Puerto Rico Superior Court, San Juan Part, entered an order with respect to said motion with the following statement: "Noted by the Court". See **Appendix B.**

3. Yesterday, July 2, 1991, the Puerto Rico Superior Court, San Juan Part, entered an order in Civil Case Number 85-1797, granting

a motion filed by plaintiff-appellee which is titled Motion Requesting an Order for Payment of Bond, without first granting defendant-appellant nor its surety time to reply to said motion. What is worse, defendant-appellant has not had the benefit of receiving a copy of the aforesaid motion requesting order for payment of bond. That is, said motion was ruled upon by the Puerto Rico Superior Court, San Juan Part, in an ex-parte fashion. See **Appendix C.**

4. As this Honorable Higher Court can observe, in the second and last paragraph of the order entered yesterday it says that the same is entered "without prejudice of the right plaintiff favored by the judgment to demand full payment of the debt from defendants..." It is clear that the message of said paragraph is that in future there shall be entered, if it has not already been entered, another order also in an ex-parte fashion authorizing the attachment of defendant-appellant's assets.

5. To prevent the prejudice which plaintiff-appellee is obviously interested in causing defendant-appellant through attachments, the party appearing herein opted to deposit this day with the Puerto Rico Superior Court, San Juan Part, the sum of $529,346.20 through official check number 765817 issued by Banco Santander Puerto Rico, in favor of madam clerk of said court. See **Appendix D.** The sum deposited includes the principal of the award, the accumulated interest thereon since October 16, 1984 until today, July 3, 1991, the costs approved by the lower court and the attorneys' fees granted.

6. Defendant-appellant, on depositing the aforesaid funds, prayed the lower court not to permit the withdrawal of said funds until such time as this Honorable Higher Court rules concerning the motion filed on June 25, 1991. Notwithstanding said prayer, defendant-appellant fears that the lower court may authorize the withdrawal of said funds inasmuch as the Mandate was sent, and prior to the Higher Court being able to rule with respect to the issues raised in the motion of June 25, 1991.

7. If plaintiff-appellee is allowed to withdraw the funds deposited today with the Puerto Rico Superior Court, San Juan Part, the appeal of Certiorari which the party appearing herein is interested in filing before the United States Supreme Court will become moot. Therefore, the interest of the party appearing herein is for this Honorable Puerto Rico Supreme Court, in protection of its

jurisdiction to stay the effects of the Mandate and allow defendant-appellee to go before the United States Supreme Court, to order the Puerto Rico Superior Court, San Juan Part, in Civil Case Number 85-1797, to abstain from entering any order authorizing plaintiff-appellee to withdraw, partially or fully, the funds deposited by defendant-appellant with said court.

WHEREFORE, it is very respectfully prayed that this Honorable Supreme Court grant the instant motion and, consequently, in protection of its jurisdiction, enter the order requested in the preceding paragraph.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of July, 1991.

I CERTIFY: That I have sent by hand, a true and correct copy of the instant motion to Atty. A.J. Bennazar Zequeira at his office located on the 17th Floor, Suite 1700 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (signed illegibly)
HECTOR SALDAÑA
EGOZCUE
BAR ASSOC. NO. 6959

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

APPENDIX A

IN THE PUERTO RICO SUPERIOR COURT
SAN JUAN PART

CARLOS M. PIÑEIRO ET AL	*	CIVIL NO. 85-1797 (905)
Plaintiff	*	
v.	*	IN RE: COLLECTION OF MONEY
AMERICAN CHEMICAL CORP. ET AL	*	
Defendants	*	
----------	*	

URGENT MOTION

TO THE HONORABLE COURT:

Comes now defendant through the undersigned counsel and very respectfully states, alleges and prays:

1. The party appearing before the Honorable Supreme Court filed this day a brief titled Motion wherein said Higher Court is prayed to order the return of the Mandate sent to this Honorable Court last June 21, 1991. Attached is a copy of the aforesaid Motion.

2. In said motion, the Honorable Supreme Court is informed that in spite of its due diligence the appearing party was not timely informed of the ruling which said court entered on June 14, 1991. To that effect, see **attached** motion.

3. On May 15, 1991, the party appearing herein filed with the Supreme Court a motion for reconsideration wherein it was propounded that the right of defendant to have said Court review the judgment entered in the above-captioned case is guarantee by the Constitution of the Commonwealth of Puerto Rico, and the non-review of said judgment would entail the deprivation of defendant-appellant's property without due process of law. That therefore, Law 115 of June 26, 1958 and Rule 18 of the Regulations of the Puerto Rico Supreme Court violate the right of appeal

guaranteed by the Constitution of the Commonwealth of Puerto Rico. *[sic]*As well as the right to due process of law guaranteed by the Constitution of the Commonwealth of Puerto Rico and the Constitution of the United States of America.

In addition, in said motion the Supreme Court is informed that the appearing party would exercise its right to file a Petition of Certiorari with the United States Supreme Court. Therefore, the Supreme Court was prayed to order this Honorable Court to return the Mandate dated June 21, 1991 and stay it until such time as the aforesaid petition of Certiorari is rule upon. See motion **attached** hereto for a more detailed description of the grounds for the petition of Certiorari.

4. In consideration of the fact that the party appearing herein did not receive a copy of the ruling entered on June 14, 1991 before the Mandate was sent to this Honorable Court and in light of the above-stated, the appearing party hereby prays this Honorable Court to take notice of the contents of the attached motion and, to that effect, in addition, it is prayed that this Honorable Court abstain from acting on said Mandate until such time as the Supreme Court rules on the motion in reference.

WHEREFORE, the appearing party very respectfully prays this Honorable Court to take notice of the above-stated in this motion as well as what is set forth in the attached motion and, to that effect, abstain from acting on the Supreme Court Mandate notified on June 21, 1991 until such time as said court issues an opinion on what is set forth in the motion filed this day with said court, which is attached herewith.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 25th day of June, 1991.

I CERTIFY: That I have sent a copy of the instant motion to Atty. A.J. Bennazar Zequeira at his office located on the 17th Floor, Suite 1700 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (signed illegibly)
HECTOR SALDAÑA
EGOZCUE
BAR ASSOC. NO. 6959

(signed illegibly)
GRACIANA M. GONZALEZ
HERNANDEZ
BAR ASSOC. NO. 10338

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

COMMONWEALTH OF
GENERAL COURT OF APPENDIX B
COURT SUPERIOR SAN JUAN PART

PIÑEIRO CRESPO, CARLOS Case No. K AC85-1797
Plaintiff COURTROOM: 0905

vs.

AMERICAN CHEMICAL CORP. CIVIL ACTION
Defendant Cause or Offense

ATTY. SALDANA EGOZCOE HECTOR
BANCO POPULAR CENTER
SUITE 1031
HATO REY PR 000000918

N O T I C E

I certify that in relation to MOTION FOR URGENT REMEDIES on JUNE 26, 1991 the Court entered the ORDER which is TRANSCRIBED below:

NOTED BY THE COURT.

SGD. JUDGE EVARISTO M.
ORENGO, JR.

I certify moreover that this day I mailed a copy of this notice to the following persons at their addresses as indicated, having this same day placed in the files a copy of this notice:

BENNAZAR SEQUEIRA A J - BCO POPULAR CENTER
BLDG - 17TH FLOOR SUITE 1700 - HATO R

SAN JUAN , Puerto Rico, this 23rd day of June, 1991

PAULITA SANTIAGO
CARTAGENA
Clerk

(signed) Carmen B. Colón
By: CARMEN L. COLON
Deputy Clerk
Dep. Clerk II

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

APPENDIX C

IN THE PUERTO RICO SUPERIOR COURT
SAN JUAN PART

CARLOS M. PIÑEIRO CRESPO, ETC.
Plaintiffs

VS.

AMERICAN CHEMICAL CORPORATION ETC.
Defendants

CIVIL NO. KAC-85-1797 (905)

IN RE:

COLLECTION OF MONEY AND BREACH OF CONTRACT

ORDER

Having considered the "Motion Requesting an Order for Payment of Bond", the same is granted and consequently, United Surety & Indemnity Company, as the solidary surety for defendants through Bond Number 901239 issued on October 18, 1990, IS ORDERED to immediately pay the bond in the amount of $502,000.00 or, within the term of ten (10) days from the day notice of this order is given, to appear to show cause why it should not be obliged to pay.

This order is entered without prejudice of the right of plaintiff favored by the judgment to demand from defendants the full payment of the debt, including daily interest, until it is fully and completely paid off.

Given in San Juan, Puerto Rico, this 2nd day of July, 1991.

BE IT NOTIFIED.

(signed illegibly)
EVARISTO M. ORENGO JR.
Superior Court Judge

[handwritten:]
notice given
on 7-3-91
11:55 am

(signed illegibly)

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

APPENDIX D

[logo] **Banco**
Santander Puerto Rico **Officer** **No. 765817**
[illegible] Hato Rey Fomento 07/03/91
Branch Date
$***529,346.20***

PAY **SUM OF 529346 DOLS 20 CTS DOLLARS**

TO (signed illegibly)
THE CLERK OF THE PR SUPERIOR
ORDER SUPERIOR COURT SJ PART
OF RE.DEPOSIT FOR JUDGMENT (signed illegibly)

ENTERED IN CIVIL CASE NO. 85-1797 (905)
[computerized numbers and symbols]
NO. 7568172 DATE 07/03/91
BENEFICIARY CLERK OF THE PR SUPERIOR
COURT SJ PART
FOR JULIO E CARRERA FOR F & J
AMOUNT $***529,346.20***
CARRERAS SUST CK 008042483

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO ET AL	*		*
	*		*
Plaintiffs-Appellees	*	NO.	*
	*	RE91-146	*
v.	*		* IN RE:
	*		*
AMERICAN CHEMICAL CORPORATION ET AL	*		* REVIEW
	*		*
	*		*
Defendants-Appellants	*		*
----------	*		*

MOTION FOR RECONSIDERATION

TO THE HONORABLE SUPREME COURT:

Comes now defendant-appellant represented by the undersigned attorney and very respectfully states, alleges and prays:

1. On June 25, 1991, the appearing party filed a motion with this Honorable Court praying that it stay the effects of the Mandate issued in the above-captioned case on June 21, 1991.

2. The aforesaid prayer for stay of Mandate was based on the fact that the appearing party will shortly file Certiorari with the United States Supreme Court alleging that the refusal of this Honorable Higher Court to review the judgment entered by the Puerto Rico Superior Court, San Juan Part, in Civil Case Number 85-1797, violates the Constitution of the Commonwealth of Puerto Rico, inasmuch as it entails the deprivation of the plaintiff's property without due process of law. Therefore, said refusal to review the aforementioned judgment of the Puerto Rico Superior Court, San Juan Part, in turn violates the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

3. Pursuant to the provisions of Rule 45 of the Regulations of this Honorable Court, in its subsection *[sic]* in any case in which a ruling of this Honorable Higher Court may be reviewed by the United States Supreme Court through an appeal of Certiorari, the sending of the Mandate to the lower court may be stayed.

4. On July 3, 1991, for the purpose of keeping the stay of Mandate from causing any harm and for the purpose of demonstrating its good faith, the appearing party deposited with the court the sum of $529,346.20 through official check number 565817, issued by the Banco Santander de Puerto Rico, in favor of the Clerk of the Superior Court of Puerto Rico, San Juan Part.

5. On that same day the appearing party filed with this Honorable Higher Court a Motion for Protection of Jurisdiction, reporting the aforementioned deposit and praying for the granting of the stay of Mandate, given that if the funds deposited were withdrawn, the ruling of which review by the United States Supreme Court was sought through the aforementioned Certiorari could become moot.

6. Notwithstanding this, on July 8, 1991, this Honorable Higher Court dismissed both motions filed by the appearing party.

7. Therefore, we are obliged to pray this Honorable Court to reconsider its ruling of July 8, 1991 in view of the fact that the totality of the award is deposited in the Clerk's Office of the Puerto Rico Superior Court, San Juan Part, which guarantees that *[sic]* plaintiff-appellee as well as this Honorable Higher Court that the stay of the effects of the Mandate is not an attempt to evade compliance with the Judgment but rather the exercise of a right. The aforesaid deposit minimizes the possible damages that could be suffered by plaintiff-appellee as a consequence of the stay of Mandate.

8. The appearing party very respectfully feels that there is no reason at all that could drive this Honorable Court to deny the prayer for a stay of Mandate, and that it would only constitute an obstacle to the filing of the petition of Certiorari with the United States Supreme Court, since the latter could become moot. *Ubiñas v. Medina*, 89 DPR 666 (1963).

WHEREFORE, the appearing party very respectfully prays this Honorable Supreme Court to reconsider its ruling of July 8, 1991 and grant the stay of Mandate prayed for.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of July, 1991.

I CERTIFY: That I have sent a true and correct copy of the instant motion by regular mail to Atty. A.J. Bennazar Zequeira at his office located on the 17th Floor, Suite 1700 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (signed illegibly)
HECTOR SALDAÑA
EGOZCUE
BAR ASSOC. NO. 6959

(signed illegibly)
GRACIANA M. GONZALEZ
HERNANDEZ
BAR ASSOC. NO. 10338

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO,	*	*
AND HIS WIFE ZENAIDA	*	*
CUBAS; JOAQUIN	*	*
RODRIGUEZ GARCIA	*	*
AND HIS WIFE CARMEN L.	*	*
BENITEZ AND THE	*	* IN RE:
RESPECTIVE CONJUGAL	*	*
PARTNERSHIPS	*	*
CONSTITUTED BY THEM	*	*
Plaintiffs-Appellees	*	* REVIEW
	*	*
v.	*	*
	*	*
AMERICAN CHEMICAL	*	*
CORPORATION AND/OR	*	*
AMERICAN CHEMICAL, INC.;	*	*
F. CARRERA & BRO., INC.;	*	*
F. & J.M. CARRERA, INC.;	*	*
CARRERAITO, INC.;	*	*
RECAITO, INC.; JOHN DOE	*	*
AND RICHARD ROE	*	*
Defendants-Appellants	*	*
	*	*

PETITION FOR REVIEW

A.J. BENNAZAR ZEQUEIRA
BANCO POPULAR CENTER
SUITE 1501
HATO REY, PR 00918
PHONE: 754-9191
PLAINTIFFS-APPELLEES

HECTOR SALDAÑA
EGOZCUE
GRACIANA M. GONZALEZ
HERNANDEZ
SALDAÑA & VALLECILLO
BANCO POPULAR CENTER
SUITE 1031
HATO REY, PR 00918
PHONE: 758-7565
DEFENDANTS-APPELLANTS

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO, AND HIS WIFE ZENAIDA CUBAS; JOAQUIN RODRIGUEZ GARCIA AND HIS WIFE CARMEN L. BENITEZ AND THE RESPECTIVE CONJUGAL PARTNERSHIPS CONSTITUTED BY THEM Plaintiffs-Appellees	*	IN RE: REVIEW
v.		
AMERICAN CHEMICAL CORPORATION AND/OR AMERICAN CHEMICAL, INC.; F. CARRERA & BRO., INC.; F. & J.M. CARRERA, INC.; CARRERAITO, INC.; RECAITO, INC.; JOHN DOE AND RICHARD ROE Defendants-Appellants		

TABLE OF CONTENTS

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO,	*		*
AND HIS WIFE ZENAIDA	*		*
CUBAS; JOAQUIN RODRIGUEZ	*		*
GARCIA AND HIS WIFE	*		*
CARMEN L. BENITEZ AND	*		*
THE RESPECTIVE CONJUGAL	*		*
PARTNERSHIPS CONSTI-	*		*IN RE:
TUTED BY THEM	*		*
Plaintiffs-Appellees	*	*	REVIEW
*	*		
v. *	*		
*	*		
AMERICAN CHEMICAL	*		*
CORPORATION AND/OR	*		*
AMERICAN CHEMICAL, INC.;	*		*
F. CARRERA & BRO., INC.;	*		*
F. & J.M. CARRERA, INC.;	*		*
CARRERAITO, INC.;	*		*
RECAITO, INC.; JOHN DOE	*		*
AND RICHARD ROE	*		*
Defendants-Appellants	*		*
	*		*

LEGAL INDEX

PAGES

I. CASE LAW FROM THE PUERTO RICO SUPREME COURT

II. LEGISLATION

III. COMMENTATORS

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO, ET AL	*	*
	*	*
Plaintiffs-Appellees	*	*
	*	*
v.	*	* IN RE:
*	*	
AMERICAN CHEMICAL CORPORATION ET AL	*	* REVIEW
	*	*
	*	*
Defendants-Appellants	*	*
	*	*

PETITION FOR REVIEW

TO THE HONORABLE SUPREME COURT:

Comes now defendant-appellant (hereinafter collectively referred to on occasion, as "Carrera"), represented by the undersigned attorneys and very respectfully states, alleges and prays:

I. JURISDICTIONAL BASIS

This Honorable Supreme Court has jurisdiction to entertain the instant petition, pursuant to the provisions of Section 14(b) of Law Number 11 of July 24, 1952 [4 LPRA 37 (b)], as amended by Law Number 115 of June 26, 1958; Rule 53.1 (b) of the Rules of Civil Procedure of 1979; and Rule 17 of the Regulations of the Honorable Supreme Court of September 1st, 1975.

II. JUDGMENT OF WHICH REVIEW IS PRAYED FOR

Through the instant appeal for review the Honorable Supreme Court is requested to review the Judgment entered on October 10, 1990 by the Honorable Evaristo M. Orengo, Jr., Superior Court Judge, GRANTING the Complaint filed in Civil Case No. 85-1979 (905) of the Puerto Rico Superior Court, San Juan Part, captioned *Carlos M. Piñeiro, et al v. American Chemical Corp., et al,* in re. Collection of Money and Breach of Contract. See **Exhibit 1**. The aforesaid Judgment was made a part of the proceedings on the same day of October 10, 1990, **Exhibit 2.**

On October 22, 1990, Carrera filed a motion with the Lower Court pursuant to Rule 43.3 of the Rules of Civil Procedure of 1979. See **Exhibit 3**. On October 25, 1990, Carrera filed a Motion for Reconsideration of the aforesaid Judgment. See **Exhibit 4.** Both Motions were DENIED by the Lower Court through a Ruling entered on February 8, 1991, which was made a part of the proceedings on the 12th of the same month and year. See **Exhibits 5** and **6.**

III. STATEMENT OF FACTS

Plaintiffs-Appellees, Carlos M. Piñeiro Crespo and Joaquín Rodríguez García, highly-experienced businessmen, educated in the commercial and legal fields, each owned 2,481 common shares and 34 preferred shares of the capital stock issued and in circulation of the corporation called American Chemical Corporation ("American"). Besides owning a partnership called Pigaro International, Ltd. ("Pigaro") which in turn had an option to purchase 43,491 common shares in American stock (for $1.00 each), which, were it exercised, would give them control over approximately 80%

of the common stock issued and in circulation. According to the Audited Financial Statements through August 31, 1991, American had accumulated losses amounting to $712,456, which had reduced its capital from $835,298 to $122,842. The financial condition of American was extremely precarious, given the fact that it had **negative** working capital amounting to $225,022. See **Exhibit 7.**

This being the case, plaintiffs-appellees went about obtaining a purchaser for American. During the summer of 1982, plaintiffs-appellees met with Mr. Antonio Blanco-Carrera, the Chairman of the Board of Directors of F. & J. M. Carrera, Inc. and Mr. Richard Reiss, who was a member of the Board of Directors of Carrera, a consultant and later in July 1982 went on to occupy the presidency of said company. On June 18, 1982, co-plaintiff Joaquín Rodríguez made an offer to Carrera, in writing, to sell it the entirety of the American stock for the sum of $471,377. See **Exhibit 8.** Said offer was turned down.

Subsequently, on August 24, 1982, the negotiations ended in an agreement. The terms and conditions thereof are incorporated in two contracts dated August 24, 1982 and were both drawn up by co-plaintiff Carlos M. Piñeiro. In the first contract (**Exhibit 9**), Piñeiro confirms in writing that ". . . the total purchase price [of the common and preferred stock] would represent a total of $147,412" to be paid at the time of closing the transaction. The Chairman of Carrera's Board of Directors expressed in writing his acceptance of the contract, and it was subsequently approved by Carrera's Board of Directors. Said terms were also ratified by American's Board of Directors and its shareholders.

In the second contract (**Exhibit 10**) which was also drawn up by co-plaintiff Piñeiro, Pigaro agreed to sell Carrera the aforesaid option under the following terms and conditions: "(1) a payment of $52,584.00 at the time of closing the option sale transaction; and (2) a participation, by means of dividends of management shares equal to 25% of the profits of American Chemical Corporation, for a period of five (5) years and up to a maximum of $300,000." (**Exhibit 10**). The Chairman of Carrera's Board of Directors agreed in writing to the aforesaid terms. Later on, the same were approved by the Boards of Directors of Carrera and Pigaro.

The closing of the transaction was carried out on October 13, 1982. At that time the purchase and sale agreement of the American common and preferred stock was signed and the price of $147,412 was paid, pursuant to what was stipulated in the first contract (**Exhibit 9**) of August 24, 1982. As for the purchase of the Pigaro option, the closing was carried out in accordance with the stipulations of the second contract (**Exhibit 10**) of August 24, 1982, and the conditional character of the obligation created between the parties was kept unaltered, since the price fixed for the option was contingent and depended on America's having net profits during the following five operating years. There were several changes of procedure to allow plaintiffs-appellees to receive the down payment agreed to, for $52,584 tax-exempt: (1) Instead of Pigaro being the seller of the option, it was substituted by plaintiffs-appellees; (2) the option was sold for the sum of $1.00, (3) the contingency on future profits of $300,000 was increased to $352,584; and (4) the sum of $52,584 was paid out as advance dividends of American (a tax-exempt corporation), agreed to as a down payment in the August 24, 1982 contract. The parties stipulated that Piñeiro would continue working as President of American and that the former would issue two management shares *"...which are to have a dividend equal to 25% of American Chemical Corporation's profits for a period of five years, up to a maximum of $352,584."* See **Exhibit 12.**

So that it might continue operating, Carrera was forced to lend American more than $1 million immediately as working capital. It was decided, moreover, to reorganize American based on the "step up" (reappraisal of assets).[1]

Co-plaintiff Piñeiro stayed on as President of American, participated in its reorganization and eventually was promoted to the second-highest hierarchical position within Carrera, that of Executive

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1 All of American's assets and obligations were transferred to another corporate entity with the same name, at the same time increasing the worth of the assets susceptible to appraisal. All this in order to present a more favorable financial statement of the new corporate entity, since Amercian's financial statement through August 31, 1982 reflected a negative capital (deficiency) of $127,436. **Exhibit 13.**

Vice-President, where he remained in charge of American's operations. Carrera introduced two new products to American (Mistolín and Shampoo Abeja [Bee Shampoo]), which contributed additional income. In addition, American Chemical's situation improved by means of three basic measures: a) management expenses were limited to $30,000 per year through a management fee which Carrera charged American; b) sales costs were limited to an 8% commission on sales made through Carrera; c) the cost of interest on monies borrowed by American, which under plaintiffs-appellees' management surpassed the rate of 20% per year, was reduced to a cost of 10% to 12% per year on monies loaned by Carrera to American for working capital.

In order to keep all of Carrera's enterprises in line with the same fiscal year, the first year of American's operations under Carrera was a five-month year ending on March 31, 1983, reflecting a loss of $33,738, which included the interest on monies loaned by Carrera to American. During the fiscal year ending on March 31, 1984, the accounting for American Chemical and Carrera was headed by Irma Belaval, who had worked for Piñeiro since 1973 and at the time of trial was still working for him. During said fiscal year American was not charged interest for the monies which Carrera lent it, amounting to $132,001.00. Nor was that charge made for the first three months of the following fiscal year, which uncharged cost came to $39,962.00. On July 31, 1984, Carrera instructed Belaval to proceed to charge the interest between the affiliated companies.[2] See **Exhibit 14.**

Since Carrera had lost more that $2,500,000 under Richard Reiss' management (Reiss was forced to resign for that reason), it was decided to sell American for $200,000 and Recaíto (another affiliate) for $900,000, to four of Carrera's shareholders, to thus inject cash into the latter and save the companies from total bankruptcy. By means of said transaction, which was carried out on July 1, 1984,

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2 Accountant Irigoyen testified that the practice of charging interest between affiliated companies was standard practice at Carrera which was in force since before 1979.

Antonio Blanes Carrera, Syra Blanes de Ortiz, Inversiones Blanes, Inc. (Blanes Investments, Inc.) and the family of *don* José M. Carrera Rolán acquired American's stock. In that same summer of 1984, co-plaintiff Piñeiro claimed 25% of American's profits for the fiscal year ending on March 31, 1984. He alleged that those profits came to $175,269 and that 25% of the aforesaid profits amounted to $43,000.25, a sum for which he had to be compensated. Carrera stated that the expense of interest on monies that Carrera had borrowed, to lend in turn to American, had to be deducted from the above-mentioned profits. The interest for those loans came to $132,001, which would reduce profits to $43,268. In addition, Carrera held that the loss of $33,738 which American had experienced in the prior (short) fiscal year, had to be deducted from those profits, which would reduce the accumulated profits to $9,530. 25% of those accumulated profits was $2,282.50 and not $43,268.00, as Piñeiro was alleging. In spite of this, Carrera advanced Mr. Piñeiro the sum of $10,000.

Piñeiro resigned from Carrera effective September 30, 1984. On October 16, 1984, Mr. Piñeiro sent a letter to Carrera requesting the liquidation of his share in American's profits for the fiscal year ending on March 31, 1984. See **Exhibit 15.** As a result of said letter, the parties attempted to resolve their differences, which were limited to whether the deduction of the aforesaid interest was called for or not. Nevertheless, plaintiffs-appellees denied the deduction thereof and no agreement was reached. This being the case, the complaint in this case was brought on January 25, 1985. See **Exhibit 16.** In said complaint it was alleged, in open contradiction to the terms of the contracts of August 24 and the agreements at the time of the October 13, 1982 closing, that the aforesaid option had been sold for $352,584, of which a down payment of $52,584 had been given *and that the balance of $300,00 was not a price whose payment was contingent on whether American would obtain profits from its operations*, but rather that it was a *deferred* price, *due annually* for a period of five (5) years. Moreover, it was alleged that Carrera had carried out corporate changes which made it impossible to monitor compliance with the contract. In essence, the payment of $300,000 was claimed, less $10,000 which had been advanced on July 5, 1984.

Defendant-appellant answered the complaint by denying the claim as stated. See **Exhibit 17.**

The trial was held in mid-1990. Both parties presented documentary and oral evidence in support of their respective contentions. Upon the conclusion of the trial on June 7, 1990, the attorneys for both parties approached the bench and the attorney for Carrera asked counsel for plaintiff-appellee if it would be necessary to submit a brief, since Carrera was interested in submitting one. Without counsel for plaintiff-appellee answering yet, the Honorable Evaristo M. Orengo, Jr. immediately stated that he did not wish for briefs to be presented. Hence, the case was submitted for ruling.

On October 10, 1990, the Honorable Superior Court of Puerto Rico, San Juan Part, the Hon. Evaristo M. Orengo, Jr., presiding, entered Judgment by using a proposal submitted ex parte by plaintiff-appellee. It granted the complaint and ordered co-defendants F. Carrera & Bros., Inc., F. & J.M. Carrera, Inc,; American Chemical Corporation, American Chemical, Inc. to pay severally the principal sum of $290,000, plus interest as of October 16, 1984, until fully paid, at a rate of 11% per annum. In addition, it found that defendant-appellant had acted recklessly and imposed the sum of $20,000 in attorneys' fees. The total amount of the aforesaid judgment so far surpasses the sum of $514,000.

IV. CITING OF ERRORS

A. The Lower Court erred when it determined that the contract executed on August 24, 1982, by virtue of which Pigaro and plaintiffs sold Carrera their option to purchase 43,491 common shares of American, established a deferred price of $300,00 payable annually over a period of five years, and not a conditional obligation to pay an interest by means of dividends equal to 25% of American's profits for a period of five years and up to a maximum of $300,000.

B. As the purchase and sale agreement on the option established a condition obligation to pay plaintiffs a participation equal to 25% of American's profits for a period of five years and up to a maximum of $300,000, the lower court when it ordered Carrera to pay $290,000 when there is no evidence in the record that American had sufficient

profits during the five years after 1982 to pay plaintiffs said amount as a participation equal to 25% of said profits.

C. The Lower Court erred when it found that defendant was in default.

D. The Lower Court erred when it found that defendant acted recklessly, and when it ordered it to pay $20,000 plus interest at 11% in attorneys' fees.

V. DISCUSSION OF ERRORS

A. The Lower Court erred when it determined that the contract executed on August 24, 1982, by virtue of which Pigaro and plaintiffs sold Carrera their option to purchase 43,491 common shares of American, established a deferred price of $300,00 payable annually over a period of five years, and not a conditional obligation to pay a participation by means of dividends equal to 25% of American's profits for a period of five years and up to a maximum of $300,000.

Following prolonged negotiations, the parties reduced to writing in the letter-contract of August 24, 1982 (**Exhibit 9**) the terms and conditions of the purchase and sale of the option to purchase 43,491 common shares of American. At that time the meeting of the minds was formalized and all the terms and conditions which constitute the true and final intention of the parties with relation to the purchase and sale of the option were integrated into the aforesaid document . The clauses of that contract, which were drawn up by one of plaintiffs, Mr. Carlos M. Piñeiro, are clear and precise. They leave no doubt whatsoever about the intention of the contracting parties. The agreement stated therein was the following: Pigaro and its shareholders pledged to sell the option to purchase the 43,491 common shares of American to F. & J.M. Carrera, Inc., pursuant to "...the following terms and conditions: (1) a payment of $52,584.00 at the time of closing the option sale transaction; and (2) a participation, by means of dividends of management shares equal to 25% of the profits of American Chemical Corporation, for a period of five years and up to a maximum of $300,000." Said contract was subscribed by Mr. Carlos M. Piñeiro, the President of Pigaro, and by

Mr. Antonio Blanes, the President of Carrera. It was subsequently approved by the Pigaro and Carrera boards of directors.

It should be noted that on the same date of August 24, 1982, the parties subscribed another contract by means of which they agreed that plaintiffs would sell and Carrera would purchase all the American common and preferred stock in possession of plaintiffs for a total purchase price of $147,412 (**Exhibit 9**). Said contract was likewise drawn up by one of plaintiffs, Mr. Carlos M. Piñeiro, agreed to by Mr. Antonio Blanes, the President of Carrera, and approved by the American and Carrera boards of directors. When the closing of the transaction was carried out fifty days later, on October 13, 1982, the purchase and sale of the American common and preferred stock was consummated and the price of $147,412, stipulated on August 24, 1982, was paid.

As for the option purchase, the closing was also carried out on October 13, 1982 pursuant to the stipulations of the contract subscribed on August 24, 1982, and the *conditional* character of the obligation created between the parties was kept unaltered. This is attested to in the letter which appears in the case file as **Exhibit 12.** Only several changes of procedure were changed to allow plaintiffs to receive the down payment agreed to of $52,584 as an advance on the exempt American dividends: (1) Instead of Pigaro being the party selling the option, plaintiffs sold the option in the sum of $1; (2) the contingency on future American profits was increased from $300,000 to $352,584; and (3) as an American dividend advance, the sum of $52,584 was paid agreed to as a down payment in the contract of August 24, 1982. But the parties again ratified the agreement that plaintiffs would receive "...two (2) management shares ('management stocks') which will have to have a dividend equal to 25% of the profits of American Chemical Corporation for a period of five years and up to a maximum of $352,584.00." (**Exhibit 12**).

In open contradiction to said clear and precise terms, based on the testimony of plaintiffs Piñeiro and Rodríguez and Mr. Richard Reiss, the lower court determined that the remainder of $300,000, which was left after deducting the down payment of $52,584, which was made to appear as a dividend advance "...would constitute the deferred price to be received (for the option) by sellers Piñeiro and

Rodríguez." DF,22[3] In their conclusions of law, the lower court reiterates that with regard to the option "A total purchase price of $500,000.00 was agreed upon... an initial payment of $200,000.00, and a deferred price of $300,000.00 by means of a plan in which the sellers would receive tax-exempt dividends." DL,68.

Rule 69B of the Rules of Evidence provides that when in an oral or written covenant "...all the terms and conditions which constitute the true and ultimate intention of the parties are included, it shall be considered that the covenant is an integrated one, for which reason there shall be no evidence between the convenients [sic] or their successors in interest extrinsic to the contents of same, except... when an error or defect in the covenant is alleged in the litigation [or] when the validity of the covenant constitutes the controverted fact." This is the principle of substantive law, even though the same was incorporated into the Rules of Evidence. See *Marina Ind., Inc. v. Brown Bovery Corp.*, 114 DPR 64, 69 (1983); and *Chávez v. Cooperativa de Crédito de Isabela*, 103 DPR 892, 894 (1975). There is no doubt that in the written covenants of August 24 and October 13, 1982, the parties included all the terms and conditions which constitute their true and ultimate intention, for which reason it is a case of integrated contracts. Therefore, as for the contents of the same, there is no extrinsic evidence pursuant to the provisions of the aforesaid Rule 69B.

In the case before us there was no evidence of prior oral contracts which changed the written covenants of August 24 and October 13, 1982. Nor was the validity of the written covenants questioned nor was it alleged that the same are flawed or contain some mistake. The lower court accepted and considered the testimony of Piñeiro, Rodríguez and Reiss, three interested witnesses, to alter the clear and precise terms of the contracts which the parties subscribed when they purchased and sold the option. Said evidence does not refer to the circumstances under which the covenants were made, nor is it invoked to prove illegality or fraud. It appears obvious to us,

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3 The letter DF refer to the Determinations of Fact and the letters DL to the Determinations of Law of the Lower Court.

therefore, that in the case before us, none of the exceptions to the rule, that there shall be no extrinsic evidence on the contents of the covenants subscribed on August 24 and October 13, 1982, is applicable.

The rule on extrinsic evidence should be interpreted and applied by integrating it into the provisions of Articles 1233 and 1234 of the Civil Code, 31 LPRA 3471 and 3472. When "the terms of a contract are clear and leave no doubt concerning the intention of the contracting parties", the Civil Code ordains that the Court abide by the literal sense of the contract clauses. That is precisely the situation in the case before us. As we indicated above, the terms and conditions of the contracts subscribed by the parties on August 24 and October 13, 1982 are clear and precise. Moreover, in the light of the terms expressed therein, it is indubitable that the intention of the contracting parties was to create a *conditional obligation and not a term obligation*. Therefore, pursuant to the provisions of our Civil Code, the Court should have abided by the literal sense of the clauses of said contracts. Their stipulations should govern between the parties without reference to extrinsic subject matter which were not expressly referred to by the contracting parties. See *Menéndez v. De la Fuente*, 34 DPR 378, 3880 (1925). Even supposing that there is some obscurity in the contracts subscribed by the parties, which we deny, the interpretation of their clauses does not favor the plaintiffs who drew up those contracts. See Article 1240 of the Civil Code, 31 LPRA 3478; *Cooperativa de la Sagrada Familia v. Castillo*, 107 DPR 405 (1978); and *Torres v. Puerto Rico Racing Corp.*, 40 DPR 441 (1930).

Pursuant to the provisions of Articles 1066, 1067 and 1078 of the Civil Code, 31 LPRA 3041, 3042 and 3061, the term obligation is one whose existence is certain, which it shall be necessary to comply with of necessity even when it is not known when; while the conditional obligation is one which depends on an uncertain event which may or may not happen. The net profits which a company may obtain constitute an uncertain event, and this is even more evident in the case of American, which in prior years had suffered losses in its operations. For that reason, when, in the contracts of August 24 and October 13, 1982, it is stipulated that plaintiffs are selling Carrera the option to purchase 43,491 common shares of American based on "...a

participation by means of dividends of management shares equal to 25 of the profits of American Chemical Corporation, for a period of five years and up to a maximum of $300,000", it is obvious that it is a case of a conditional obligation and not of a term obligation. The event that net profits will be made may or may not take place, and additionally has to take place within a given time frame, five years, in order for it to produce the effects which the parties stipulated. Never was a deadline stipulated within which Carrera had to pay a certain sum because there was no certainty as to the realization of net profits resulting from American's operations. See Albaladejo, *Comentarios al Código Civil y Compilaciones Forales,* Tome XV, Vol. 1 (1989) 988ss; Tome XV, Vol. 2 (1983) 1-83.

To alter the contents of the contracts of August 24 and October 13, 1982, transforming the conditional obligation which is clearly stipulated therein, into a term obligation, the lower court bases itself exclusively on the testimony of plaintiffs Piñeiro and Rodríguez and Mr. Richard Reiss. These three witnesses stated at trial that the intention of the parties was to create a term obligation and not a conditional obligation. Piñeiro was the person who drew up the contracts of June 24, 1986 and to whom was addressed the letter-contract of October 13, 1982. His testimony lacks any probative value because in the deposition taken of him on June 24, 1986 (**Exhibit 41**), referring to the contract of August 24, 1982, Piñeiro expressly admitted that the parties agreed that the payment of the $300,000 for the option was contingent upon the results of operations, contingent upon the corporate (American) profits over the following five years. See pages 316-318 of the Appendix, **Exhibit 41**. Moreover, in said deposition, referring to the letter-contract of October 13, 1982, Piñeiro expressly admits again that the $300,000 was subject to the company profits, was contingent upon said profits. See pages 319 and 320 of the Appendix, **Exhibit 41.** Said deposition was admitted into evidence. In making his determinations of fact, the lower court judge utterly discarded Piñeiro's deposition and alludes exclusively to the testimony which said plaintiff gave at trial.

Nor does Rodríguez's and Reiss' testimony merit credit. Both accepted the clear and precise terms of the contract of August 24, 1982 which establishes a conditional obligation and not a term obligation. In addition, Reiss was the person who drew up the

agreement of October 13, 1982 on behalf of Carrera and American Chemical. See **Exhibit 12.** The evidence before us shows, on the other hand, that Reiss was dismissed by Carrera in 1983, because that company lost more than $2.5 million under his management. Obviously, his testimony was a product of the natural resentment which arises as a consequence of those circumstances.

In conclusion, the determination that the parties created a term obligation, and not a conditional obligation, is clearly erroneous and does not represent the most rational, equitable and juridical balance of the entirety of the evidence received. This will be fully proven when this Honorable Supreme Court examines the transcription of evidence which we are requesting through a separate motion. Finally, it should be pointed out that (1) the lower court based its determinations and conclusions on a judgment proposal which was presented ex parte by plaintiffs-appellees; and (2) the lower court rejected the offer which defendant made to file a brief upon the conclusion of the trial hearing, stating that he did not wish to have briefs filed. Under those circumstances, the duty to do justice demands that this High Court carefully examine the findings of the lower court, review of which is prayed for in this appeal. Cf. *Malavé v. Hospital de la Concepción*, 100 DPR 55, 56-67 (1971); and *Arroyo v. Rattan Specialties, Inc.*, 117 DPR 35 (1986).

B. As the purchase and sale agreement on the option established a condition obligation to pay plaintiffs a participation equal to 25% of American's profits for a period of five years and up to a maximum of $300,000, the lower court erred when it ordered Carrera to pay $290,000, when there is no evidence in the record that American had sufficient profits during the five years after 1982 to pay plaintiffs said amount as a participation equal to 25% of said profits.

The Honorable Court which passed judgment based the financial penalty which it imposed on Carrera on its erroneous finding of a term obligation of $300,000. There being no such term obligation, pursuant to subsection (B) of Rule 10 of the Rules of Evidence of 1979, plaintiff-appellee had the burden of proof as to what profits, if any, American Chemical had during the five-year period from October 13, 1982 in order to establish some debt on the part of Carrera.

Plaintiff-appellee did not comply with the requirement of Rule 10 of the above-cited Rules when it failed to present evidence of American Chemical's profits during the aforementioned period. Still less did it present evidence that said profits amounted to at least $1,200,000 to justify the finding that defendant-appellant owes plaintiff-appellee the sum of $290,000.

Said sum of $290,000 does not arise from any source but the allegations and plaintiff-appellee's theory, which do not constitute evidence. *Asoc. Auténtica Empl. v. Municipio de Bayamón*, 111 DPR 527, 531 (1981). Hence, it is necessary that this Honorable Supreme Court reverse the judgment of the Honorable Lower Court.

On the other hand, the uncontroverted evidence presented through the testimony of defendant-appellant's witness, CPA Diego Chévere and the Financial Statements of American Chemical duly audited by Touche Ross & Co.[4] established that American's total profits for the five-year period comprising October 13, 1982 through October 31, 1987 amounted to $275,462, which is broken down as follows: a) through March 31, 1983, there were losses of $33,738; b) through March 31, 1984, there were profits of $175,269 which were reduced by $132,001 in uncharged interest, for net profits of $43,268; c) through March 31, 1985 there were profits of $95,932 which were reduced by $39,962 in uncharged interest, for net profits of $55,970; d) through March 31, 1986, there were profits of $101,404; e) through March 31, 1987, there were profits of $101,947; and f) between April 1, 1987 and October 31, 1987, there were profits of $6,611. See **Exhibits 43, 44, 45, 46 and 47.**

The contracts between the parties in no way prohibit Carrera from being able to charge American interest on money it had loaned out to it. To that effect, plaintiff-appellee's expert testified that the interest charge for money loaned is a necessary expense which has to be deducted to determine net profits.[5] Plaintiff-appellee Carlos M.

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4 Plaintiff-appellee's expert, CPA Jorge Torres Vallés, admitted that American Chemical's Financial Statements were trustworthy.

5 The uncontroverted evidence that the Lower Court received was in the sense that the interest charged American Chemical by Carrera was for monies loaned for its operation and that what was charged was the same that Carrera paid the

Piñeiro himself had admitted this in the deposition which was taken of him on June 24, 1986, a transcript of which was admitted in evidence. See pages 321, 322 and 323 of Appendix, **Exhibit 41.**

In light of the above, certainly the findings of facts adopted by the Honorable Court which passed judgment do not represent the most rational and equitable balance of the evidence presented. Moreover, the financial penalty is not supported by evidence, wherefore it is necessary that the judgment being appealed herein be reversed.

C. The Lower Court erred when it found that defendant was in default.

In its conclusions of law, the Honorable Court which passed judgment stated that the appearing party was in default as of October 16, 1984, on which date co-plaintiff Piñeiro demanded by letter that Mr. Blanes pay his "participation". The court based its finding of default on Article 1053 of the Civil Code, 31 LPRA 3017, which states:

> "Those who are obliged to deliver or do some thing shall be in default from the moment the creditor demands of them the fulfillment of their obligation, whether in or out of court..."

To that effect, Guaroa Velázquez states that there are several conditions for there to be default.

> "These conditions may be reduced to three:
>
> First. **That the obligation is due and liquid.** Due, for as long as the day that it is exigible does not come, the debtor is not failing in his duties nor is he subject to liability for being in arrears. Liquid, for where there is no certainty as to the debt, where it is not known what is essential to do or what needs to be delivered, the element of culpability in the arrears of the debtor is absent.
>
> Second. **That the debtor delay compliance of the obligation.** This delay must be unjust, i.e., imputable. To that effect Valverde states: 'If it is shown that the delay

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banks since it in turn had to borrow that money.

had occurred notwithstanding due diligence by the debtor, default does not actually exist and no liability arises.

Third. **That the creditor demand payment from the debtor in or out of court.** For, as long as payment is not demanded, the debtor, even though in arrears in executing payment, is not in violation. Now then, the Code does not state how said demand is to be made; hence the out of court intimation, oral or written, as long as the debt is proven to have been demanded, is operative." Guaroa Velázquez, *Las Obligaciones según el Derecho Puertorriqueño*, Equity, 1964, p. 155.

From the letter of October 16, 1984 itself, in which Mr. Piñeiro claims payment of "his participation", it is apparent that the parties were not in agreement on the sum owed, for which reason said debt was not liquid. Furthermore, the fact that the parties were unable to agree on a sum equivalent to the participation owed, was what motivated the filing of the Complaint before us. In addition, in the case file there is a letter of October 23, 1984 from Mr. Antonio Blanes which demonstrates his willingness to discuss the liquidation of his participation in the corporate profits and that the arrear in payment is not culpable. **(Exhibit 42).**

This Honorable Supreme Court in *Guadalupe v. Rodríguez*, 70 DPR 958 (1950), stated the following in relation to the meaning of "liquid debt":

> "The word 'liquid' in relation to an account, in common language means the balance or remainder of a certain sum resulting from the comparison of the charge with the data." And the word "exigible", referring to an obligation, means compliance therewith can be demanded. Consequently, when it is alleged that the account is 'liquid and exigible', facts are being stated, to wit: that the remainder of the account has been accepted as correct by the debtor and that it is due and payable."
>
> "...in order for there to be a settlement from the legal point of view, it is essential that the same be verified satisfactorily by both parties, or by one of them with the express or implicit agreement of the other." *Guadalupe v. Rodríguez, supra*, p. 966-967.

Pursuant to the governing rule, the amount owed should be certain and default in payment must be culpable in order for the debtor to be assessed indemnity for default. The appearing party was at all times willing to meet and talk in order to determine the amount owed, which is clear from the aforesaid letter of October 23, 1984 from Mr. Antonio Blanes.

In *Valcourt v. Iglesias*, 78 DPR 630 (1955), in the opinion of Associate Judge Belaval, citing several recognized commentators, he states:

> "It should be noted and is theoretically and practically important that constitution of default is different from simple arrears, because it presupposes the commencement of a special state of the latter, the more precise and solemn declaration, to put it that way, that the former begins and that with it the arrears begin to produce the effects which are peculiar thereto, it becoming necessary, therefore, to determine when the arrears appear, and according to the origin of such declaration it should be distinguished, pursuant to law, from the covenant or from the claim of the debtor": 8 Manresa: Comentarios al Código Civil Español 124 (pub. by the Instituto Editorial Reus, 1950).

Castán, in his work, *Derecho Civil Español, Común y Floral [sic]*, defines default as culpable arrears:

> "...in a liberal sense, by default or delay is understood arrears in the fulfillment of an obligation. But in a proper and juridical sense only default is culpable arrears..." 3 Castán, *Derecho Civil Espanol, Común y Floral [sic]* 140 (pub. by the Instituto Editorial Reus, 1954)

> When is it that mere arrears or tardiness without default becomes default? When the creditor demands in or out of court the fulfillment of his obligation, according to Art. 1053 of our Code. As long as the creditor does not perform this affirmative action, the debtor is covered by the presumption of the creditor's benevolence toward his debtor: 19 Scaevola 451, final paragraph, (work and edition cited); 3 Castán 142 (work and edition cited). There is no doubt as to the transformation of mere arrears

> into default when it is a matter of a court demand for payment. **Default begins from the time the suit is filed, if it is a matter of liquid and exigible amounts, and from the moment judgment is entered, if it is a matter of illiquid or indeterminate amounts, the sum of which must be determined by the Court passing judgment".** 3 Castán 141 (work and edition cited). *Valcourt, supra*, p. 638-637.

It must be concluded that arrears in payment in the case before us is owing to the existence of a genuine controversy about the sum owed; it is not a culpable arrear, wherefore the determination of default is not in order.

D. The Lower Court erred when it found that defendant acted recklessly, and when it ordered it to pay $20,000 plus interest at 11% in attorneys' fees.

In its Judgment the Honorable Court, subsection 70 of the Findings of Facts, states:

> "The court finds that defendant acted recklessly in the handling of the lawsuit."

Very respectfully, we feel that this suit involves a genuine controversy between the parties which, when it could not be resolved between them, turned to the Court to solve it.

In *Fernández v. San Juan Cement Co., Inc.* 118 DPR 713, 718 (1987) this Honorable Supreme Court, citing commentator H. Sánchez, "Rebelde sin Costas", states that recklessness, in spite of the fact that it is not clearly defined in the Civil Code, entails the following:

> "Recklessness is an attitude projected onto the proceedings which affects the smooth functioning and administration of justice. It also subjects the innocent* litigant to the ordeal of the judicial proceeding and exposes it to unnecessary expenses and to the retaining of professional services, including attorneys, with the sometimes exorbitant taxing of its resources."

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* *[The text reads "inocuente" [sic] instead of "inocente"]*

This Honorable Supreme Court in *Fernández, supra*, specifies that it has found that there is recklessness when: the defendant answers and denies its total liability, even though it later accepts it; defends itself unjustifiably from the action; does not admit candidly its limited or partial liability, in spite of believing that the only reason it has to oppose the complaint is that the amount is exaggerated; runs the risk of litigating a case in which its negligence is obvious. In addition, recklessness has been found when the party denies a fact it knows to be true. *Fernández v. San Juan Cement, supra*, pp. 718-119 *[sic]*.

Rule 44.1 of the Rules of Civil Procedure of 1979, states that in the cases in which the party or its attorney has proceeded recklessly, the Court must impose in its judgment a sum for attorney's fees which it feels is appropriate to such conduct. In addition, Rule 44.3 imposes on the reckless party the payment of interest which the Financial Board of the Office of the Commissioner of Financial Institutions has fixed.

To that end, the Honorable Supreme Court states:

> "The primary purpose of authorizing the imposition of attorney fees in cases of recklessness, is that of establishing a penalty on a losing litigant which, out of its own recklessness, obstinacy, contumacy and insistence on a groundless attitude, forces the other party unnecessarily to assume the bother, expenses, work and problems of a lawsuit." *Fernández v. San Juan Cement, supra*, p. 718.

> "The imposition of interest in the instant case is of an identical nature to the imposition of attorney fees. Both are in order when the losing party has been reckless, and pursue identical purposes: to dissuade the litigation and encourage transactions, through sanctions against the reckless party to compensate the financial damages and the bother, the outcome of its recklessness, suffered by the party." *Fernández v. San Juan Cement, supra*, p. 722.

In the instant case, defendant-appellant has based its theory on the written contracts between the parties by reaffirming the literal sense thereof. Consequently, this party has not assumed a groundless

position. Actually, it has been plaintiff-appellee which has acted stubbornly, obstinately and contumaciously by adopting an utterly groundless theory.

Hence, we respectfully consider that if anyone has behaved recklessly, it has been plaintiff-appellee. Consequently, the imposition of fees for recklessness should fall to said party.

VI. PRAYER

WHEREFORE, it is very respectfully prayed that this Honorable Supreme Court issue the Writ of Review and, consequently, reverse the Judgment entered by the Honorable Superior Court, San Juan Part, in Civil Case Number 85-1797.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of March, 1991.

I CERTIFY: That I have hand-delivered a copy of the instant Petition to Atty. A.J. Bennazar Zequeira at his office located on the fifth floor, Suite 1501 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (signed illegibly)
HECTOR SALDAÑA
EGOZCUE
BAR ASSOC. NO. 6959

By: (signed illegibly)
GRACIANA M. GONZALEZ
HERNANDEZ
BAR ASSOC. NO. 10338

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO, AND HIS WIFE ZENAIDA CUBAS; JOAQUIN RODRIGUEZ GARCIA AND HIS WIFE CARMEN L. BENITEZ AND THE RESPECTIVE CONJUGAL PARTNERSHIPS CONSTITUTED BY THEM	*	IN RE:
Plaintiffs-Appellees	*	REVIEW
v.	*	
AMERICAN CHEMICAL CORPORATION AND/OR AMERICAN CHEMICAL, INC.; F. CARRERA & BRO., INC.; F. & J.M. CARRERA, INC.; CARRERAITO, INC.; RECAITO, INC.; JOHN DOE AND RICHARD ROE	*	
Defendants-Appellants	*	

APPENDIX

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO, ET AL.,	*	IN RE: REVIEW
Plaintiffs-Appellees,	*	
vs.	*	
AMERICAN CHEMICAL CORPORATION, ET AL.,	*	
Defendants-Appellants.	*	

MOTION REQUESTING TRANSCRIPT OF EVIDENCE

TO THE HONORABLE SUPREME COURT:

Come now defendant-appellant represented by the undersigned attorneys and very respectfully state, allege and pray:

1. On March 14, 1991 the party appearing herein filed a Petition to Review the Judgement pronounced by the Honorable Judge Orengo on October 10, 1990.

2. In said Petition, among other things, the party appearing herein alleges that the trial court committed a crass error in its appreciation of the evidence since the determinations of facts are not supported by the evidence admitted and, therefore, do not represent a just analysis of same.

3. In compliance with what is stated in Rule 18 of this Honorable Supreme Court's Regulations, it is essential to incorporate a summary of the pertinent part of the necessary evidence submitted before the trial court into this motion, in order to back up the alleged error referred to.

4. In the Petition to Review filed by the party appearing herein, the following errors were indicated among others:

A. The Trial Court made a mistake upon determining that the contract made on August 24, 1982, by virtue of which Pigaro and plaintiffs sold Carrera their option to buy 43,491 common shares of American, established a deferred price of $300,000 due annually for a period of five years, and not a conditional obligation to pay participation by means of dividends equal to 25% of American profits for a period of five years and up to a maximum of $300,000.

B. Since the sale contract of the option established a conditional obligation to pay plaintiffs participation equal to 25% of American profits for a period of five years and up to a maximum of $300,000, the trial court made a mistake upon ordering Carrera to pay $290,000 when there is no evidence in the record that American had sufficient profits during the five years following 1982 to pay said amount to plaintiffs as participation equal to 25% of said profits.

5. The trial court erroneously determined that the contract provided for the payment of an obligation in installments amounting to $300,000.

The plaintiff-appellee, Mr. Piñeiro, explicitly admitted in his deposition taken on June 24, 1986 that the agreement between the parties was a conditional one subject to American Chemical profits during the five subsequent years.

> "P. Let's mark, for the record, the letter that the witness identified as Exhibit No. 2. Whose idea is that formula that is established in this letter that we have marked as Exhibit No. 2?
>
> R. Well, that one was discussed after having discussed many formulas like this one in the other letter, with Blanes, Richard Risk, Joaquín Rodríguez and me, and we came to that formula.
>
> P. And who is the structure of that manner is what I am asking. That is, from which side does that structuring come, from your side, the representatives of Pigaro, or from Carrera's side?
>
> R. Well, I would say that if anyone structured it we did, because we were the ones always submitting negotiating formulas, as was seen in this other letter and was accepted in a meeting and later it was decided to be put in writing.

P. And what is the reason for your understanding that the figures mentioned in that letter, in the manner in which they are mentioned in that letter, are contingent upon the corporation profits for five subsequent years?

R. Because it was determined that way. It is participation by means of dividend. That is, it has two forms of payment; at the time of closing the transaction, the fifty-two thousand five hundred and eighty-four dollars. And they were supposed to hand over some shares to me which they never gave to me, nor have I seen them yet. And those shares would have a dividend of 25% up to the amount of three hundred thousand dollars in the next five years, whichever came first.

P. If the corporation earned money?

R. Yes, that was while we stayed on.

P. That is, that you were contingent upon the result of operations?

R. Correct. And that is what we cannot offer to the rest of the shareholders, if we stayed on. And I add, to a company that had not been earning profits; afterwards we were contingent upon that we had agreed to that.

P. Whatever there may have been?

R. Yes. (With his head). And the rest got advances." See pages 316, 317 and 318 of the Appendix, **Exhibit 41** of the Petition to Review.

Later in the same deposition, but referring to the letters-agreement of October 13, 1982 (**Exhibits 11 and 12**), Mr. Piñeiro stated the following:

"P. How do you explain that what is stated on the August 24, 1982 document is implemented as you say throughout those documents?

R. Well, I see it so clearly, counsel.

P. Explain it to me?

R. Well, if you add the fifty-two thousand dollars and the three hundred thousand dollars in paragraph one it adds up to the same amount that has been implemented with three hundred fifty-two thousand five hundred

eighty-four, that is, you can see there is no difference at all.

P. That is, that the same amount that Mr. Richard's letter to you talks about is the same amount that this letter talks about?

R. It is the implementation of that agreement.

P. And that the option is then really sold for one dollar?

R. And other valuable considerations that are these three hundred fifty thousand...

P. Those three hundred fifty thousand dollars.

R. ...which fifty-two thousand are to be given at the time this transaction that is talked about here in the first paragraph is reached, and the difference, well, rests with the management shares that, I repeat, I have never seen, and the 25%.

P. I'm sorry. The three hundred and fifty-two thousand dollars were subject to, were contingent upon the company's profits?

R. No, sir.

P. Why?

R. The fifty-two thousand dollars were a down payment, and it was the three hundred thousand dollars that was subject to the company's profits.

P. Is that how you understand the transaction?

R. That was the transaction, counsel.

P. But is that stated here in that October 13 document?

R. That was the spirit of the negotiation." See pages 319 and 320 of the Appendix, **Exhibit 41**.

Said deposition was admitted into evidence as defendants' Exhibit H. In the determinations of facts the judge of instance completely disregarded the Piñeiro deposition and alluded solely to the testimony said plaintiff gave in court, notwithstanding the fact that it was in open contradiction to his previous admission.

On the other hand, the testimonies of Rodríguez and Reiss do not deserve any credit whatsoever either. They both accepted the clear and precise terms of the August 24, 1989 contract that establishes a

conditional obligation and not one in installments. Furthermore, Reiss was the person who drafted the October 13, 1982 agreement. In addition, the evidence shows that Reiss admitted that what the Carrera Board of Directors approved was the content of the August 24, 1982 letter. Furthermore, the evidence also shows that Reiss was fired from Carrera in 1983 because said company lost more than $2.5 million under his administration. Which in turn shows that Mr. Reiss' testimony is a product of his resentment created by the dismissal.

The evidence presented shows that the parties created a conditional obligation, and not an installment obligation, which makes the trial court judgement clearly incorrect and does not represent the most rational, just and lawful balance of the totality of evidence received, which shall be completely confirmed upon examination by this Honorable Supreme Court of the transcript of evidence requested by this means.

It is fitting to point out that the need for the transcript of evidence becomes imminent when considering that the Court of Judgement based its judgement on a project presented ex parte by the plaintiffs-appellees.

6. The Honorable Court of Judgement based the financial order it imposed upon Carrera on its mistaken determination of a deferred $300,000 obligation. Since no such deferred obligation existed, pursuant to paragraph (B) of Rule of Evidence 10 of 1979, plaintiff-appellee had the burden of proving what benefits, if any, American Chemical had during the period of five years starting from October 13, 1982, to establish any debt whatsoever on Carrera's part.

Plaintiff-appellee did not comply with the requisites of Rule 10 of the aforementioned when they did not submit evidence regarding the benefits of American Chemical during the period referred to. Much less did they submit evidence that said benefits amounted to at least $1,200,000 which would justify the determination that defendant-appellant owed plaintiff-appellee the amount of $290,000.

In light of the aforementioned, the determinations of facts reached by the Honorable Court of Judgement certainly do not represent the most rational and just balance of evidence submitted. Furthermore, the financial order is not supported by the evidence, making it necessary to reverse the judgement which is appealed herein.

7. For a detailed analysis of the evidence submitted regarding the determinations of facts we refer to our motion requesting additional determinations under Rule of Civil Procedure 43.3 of 1979, which is part of the Exhibits of the Petition to Review, **Exhibit 3**, page 37 of the Appendix.

8. Due to the aforementioned, the transcripts of all of the evidence submitted before the Court of Judgement in the hearings held on May 15, 16, 17, 18, 22, 23, 24, 29 and 30, 1990, and June 5, 6 and 7, 1990 are necessary in order for this Honorable High Court to find itself in an adequate position to be able to issue a decision regarding the issuance of the appeal for Review requested by the party appearing herein. For which we very respectfully request that said transcript be ordered and a reasonable term be granted to carry out same.

9. Due to the fact that the errors indicated require the exact transcript of the oral evidence given, the party appearing herein very respectfully understands that it would not be appropriate to expound upon the evidence submitted by the parties since it could weaken same. In this manner we shall avoid contaminating this Honorable High Court with Facts as they are interpreted by the parties. *ELA v. Mercado Carrasquillo*, 104 DPR 784, 789 (1976).

10. Due to the fact that in the case at bar the complete transcript of evidence is necessary for an appropriate evaluation of the captioned Petition to Review, and it is not a matter of requesting the transcript for the purpose of delaying the proceedings before this Honorable Court, the party appearing herein very respectfully believes that it has complied with the requisites of Rule 18 of the Regulations of the Supreme Court and what follows is that the transcript of evidence as requested herein be ordered. *Rodríguez v. Commonwealth Ins. Co.*, 104 DPR 879, 880 (1976).

WHEREFORE, the appearing party herein very respectfully requests this Honorable Supreme Court to order the transcript of the hearings held on May 15, 16, 17, 18, 22, 23, 24, 29 and 30, 1990, and June 5, 6 and 7, 1990, before the Superior Court, San Juan Part, civil case no. 85-1797.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico on March 18, 1991. I CERTIFY: I have sent a copy of the present motion by hand to Atty. A.J. Bennazar

Zequeira at his office located on the 15th floor, Office 1501 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (Signed. Illegible).
HECTOR SALDAÑA
EGOZCUE
BAR MEMBER NO. 6959

By: (Signed. Illegible).
GRACIANA M. GONZALEZ
HERNANDEZ
BAR MEMBER NO. 10338

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Daniel Tomlinson 8/28/91
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑERO CRESPO, et al.	*	
Plaintiffs-Appellees	*	
vs.	*	No. RE-91-146 REVIEW
AMERICAN CHEMICAL CORPORATION and/or AMERICAN CHEMICAL, INC., et al.	*	
	*	
Defendants-Appellants.	*	

RULING

San Juan, Puerto Rico, April 5, 1991.

Regarding the petition for review, it is denied.

Agreed to by the Court and certified by the Chief Clerk. Associate Justices Rebollo López and Andreu García would issue. Associate Justices Negrón García and Alonso Alonso abstained.

(Sgd.: Illeg.)
Francisco R. Agrait Lladó
Chief Clerk

(Bears the seal of the court.)

Notified on:
(Handwritten: April 8, 1991
By: Jorge Maldonado

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -

To be acorrect translation made
and/or submitted by the
interested party
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

Carlos M. Piñeiro Crespo, Et Al.,	* No.RE91-146	* REVIEW
	*	*
Plaintiffs-Appellees,		
	*	*
vs.		
	*	*
American Chemical Corp. and/or American Chemical, Inc., Et Al.,	*	*
	*	*
Defendants-Appellants.		
----------	* *	

MOTION TO RECONSIDER

TO THE HONORABLE SUPREME COURT:

Come now defendants-appellants through the undersigned representation, and very respectfully state and pray:

1. On April 5, 1991 this Court issued a decision refusing to issue the writ of review requested by appellants. The Associate Justices Mr. Negrón García and Mr. Alonso Alonso withdrew, therefore, only five of the seven judges that make up this Court participated. The Associate Justices Mr. Rebollo López and Mr. Andreu García voted in favor of issuing the writ. The other three participating judges voted against. In order for the Full Court to issue a writ, pursuant to the provisions of 3(a) of the Regulations "...the votes of at least half of the participating judges are required." Literally applied, this rule means that a substantial minority of the Court is not enough to issue a writ of review when only five judges participate. A majority vote is required just as if it dealt with a decision of the full Court on the merits.

2. Considering the limited attention that the justices of this Court can give each case at the stage of issuing or denying the discretional

writs and the strict restrictions that the Regulations impose upon the parties requesting review,[1] appellants deem that in order to moderate the strictness of 3(a) in the case of record, this Court should liberally apply the criteria established in 19A for issuing a writ. Based on these criteria we respectfully submit that it is lawful to issue the requested writ of review. In the first place, because of the grounds stated in the request for review, "...the remedy and resolution of the judgement... appealed against... is against the law, holding this one to its broadest meaning." 19A(1). In the second place, it seems unquestionable to us that the matters set forth "...demand more thorough consideration in light of the more elaborate records and allegations that have arisen." 19A(8). In the third place, granting of the requested writ would contribute "...to the duties of this Court to vindicate the law and rule on the law of the land." 19A(11). Lastly, "...the circumstances of the facts involved in the [case of record] are the most appropriate for analyzing [the legal matters set forth]. 19A(4).

3. In Puerto Rico, as it is well known, the right to appeal in civil cases brought before the Superior Court does not exist. Review by this Supreme Court is entirely discretional. Nevertheless, that discretion depends on the duties discharged by this Court in a legal system such as ours, where no intermediary court of appeal exists. As the only court of review, your duty consists of carrying out justice in accordance with the law in all of the cases brought to your

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1 During 1989-90, for example, 1328 appeals for review and certiorari appeals were presented and decided before this Court. Of those, 126 were issued and 1202 were denied, according to the statistics submitted by the Secretary General. Except in extraordinary cases, beginning on January 1, 1967, the Regulations do not allow the transcript of evidence to be presented upon request for review. Originally, from 1958 until the end of 1966, the appellant in review could include a copy of the transcript of evidence. In 1967 the Court was granted the discretion to authorize or deny the presentation of a transcript of evidence for the purposes of considering the review. The request is limited to twenty pages by Rule 17E, many of which must be dedicated to a reporting of the facts. Therefore, it is impossible to make an ample and precise examination of the matters involved in the request for review. It is obvious that once the writ is issued and the transcript or narrative statement is presented, one can obtain a much more precise and intelligent view of the controversies set forth, the determinations made by the trial court and the judgement issued by the latter.

consideration, and ruling on the law applied by the rest of the courts in the country. For this reason when the judgement appealed is shown to be unjust and legally incorrect, as occurs in the case of record, even if the matter set forth is not important for the public interest, this high Court must not close the doors on the litigant that turns to it by means of an appeal for review. See Lilly & Scalia, *Appellate Justice: A Crisis in Virginia?*, 57 Va. L. Rev. 3, 12-14 (1971); Karlen, *Appellate Courts in the United States and England* (1963) 30-32; *ABA Standards Relating to Court Organization* (1974) 33-35; Leflar, *Internal Operating Procedures of Appellate Courts* (1976) 1-12; Nota, *The Right to Appeal and Appellate Procedural Reform*, 91 Col. L. Rev. 373 (1991). Its primary duty is to carry out justice to litigants correcting the errors that trial courts have made. As we indicated in our request for review, the a quo court in the case of record committed four errors of such nature that they deserve the reversal of the judgement issued.

4. Furthermore, in the case of record, this Court has the opportunity of ruling on the law by setting the scope of Evidence 69B and its relationship with the standards regarding interpretation of contracts as established by the Civil Code in its articles 1233 to 1241, 31 L.P.R.A. §§3471 to 3479. *San Juan Credit, Inc. v. Ramírez*, 113 D.P.R. 181, 189, 191, 202-204 (1982); *Chaves v. Cooperativa de Crédito para Isabela*, 103 D.P.R. 892, 894-895 (1975); *Merle v. West Bend Co.*, 97 D.P.R. 403, 409-414 (1969), and *Marina Ind. Inc. v. Brown Boveri Corp.*, 114 D.P.R. 64, 69, 72 (1983); *Luce & Co. S. en C. v. Junta de Relaciones del Trabajo*, 86 D.P.R. 425, 433, 435 (1962); Puig Brutau, *Fundamentos de Derecho Civil*, Volume II, vo. 1 (3d ed.) 222-243; y Albaladejo, *Comentarios al Código Civil*, Volume XVII, vol. 2 (1984) 15-243. This matter has never been considered in a precise and exhaustive manner by this high Court.

5. The rule that prohibits amending the conditions of a written agreement by extrinsic evidence is incorporated into Puerto Rican law in 1905. Art. 25 of the March 9, 1905 Law, 32 L.P.R.A. §1668. It remained unchanged until 1979. The analytical jurisprudence of same is very extensive. The Supreme Court did not include said rule in the rules of evidence it approved and referred to the Legislative Assembly, because it considered same a principle of substantive law regarding obligations and contracts, and not a standard of evidentiary

law. Nevertheless, the Legislature rejected the elimination of the rule of extrinsic evidence and accepted it upon approving 69B. The present rule provides that when in an verbal or written agreement all of the terms and conditions that make up the true and final intention of the parties have been included, extrinsic evidence cannot be admitted to its contents except when an error or imperfection in the agreement is alleged in the litigation or when the soundness of the latter constitutes the fact in dispute.

6. In the case of record the parties signed two contracts. One with the date of August 24, 1982 and the other dated October 13 of that same year. Both were drafted by one of the plaintiffs and approved by the board of directors of the two corporations involved in the transaction. There is no doubt, therefore, that the parties included all of the terms and conditions that made up their true and final intention in those written agreements, for which reason they are integrated contracts. There was no evidence of subsequent verbal contracts nor was the soundness of the written agreements questioned nor was it alleged that same were imperfect or contained an error. The trial court admitted and considered the testimonies of three interested witnesses to amend the terms of said contracts, transforming the conditional obligation clearly stipulated in same into an installment obligation. Said evidence does not refer to the circumstances under which the written agreements were made, nor is it invoked to prove illegality or fraud. It is obvious, therefore, that the trial court should have excluded the referenced extrinsic evidence regarding the content of the agreements.

7. Furthermore, in light of the clear and precise terms of the contracts signed by the parties, the intention of the contracting parties was to create a conditional obligation and not an installment obligation. Therefore, pursuant to the provisions of our Civil Code, the a quo court should have abided by the literal meaning of the clauses of said contracts. This is specifically provided in article 1233 of the Civil Code, 31 L.P.R.A. 3471.

The installment obligation, as provided in articles 1066, 1067 and 1078 of the Civil Code, 31 L.P.R.A. 3041, 3042 and 3061, is one whose existence is certain, which shall be fulfilled necessarily even if it is not known when; while the conditional obligation is one that depends upon an uncertain event that may or may not occur. The net

profits that a company may earn constitute an uncertain fact, and this is even clearer in American's case, which had suffered operational losses in previous years. Because of this, when it is stipulated in the contracts of August 24 and October 13, 1982, that plaintiffs sell Carrera the option to buy 43,491 common American shares based on, "...participation by means of dividends of management shares equal to 25% of the profits of American Chemical Corporation, for a period of five years and up to a maximum of $300,000," it is obvious that it involves a conditional obligation and not an installment obligation. The event of profits being earned can take place or not, and moreover, it has to take place within a determined period of time, five years, for the effects stipulated by the parties to take place. A period within which Carrera had to pay a particular amount was never stipulated because there was no certainty regarding the earning of net profits as a result of American operations. See Albaladejo, *Comentarios al Código Civil y Compilaciones Forales,* Volume XV, Vol.1 (1989) 988ss; Volume XV, Vol. 2 (1983) 1-83.

In view of the aforementioned, the case of record also has fulfilled the requisite established in paragraph 4 of 19A of the Regulations to issue a writ of review, namely that, *"...the circumstances of the facts involved are the most appropriate for analyzing the problem set forth."*

8. In order to amend the contents of the August 24 and October 13, 1982 contracts, changing the conditional obligation that is so clearly stipulated there into an installment obligation, the trial court bases itself exclusively on the testimony of plaintiffs Piñeiro and Rodríguez and that of Mr. Richard Reiss. These three witnesses stated in the trial that the intention of the parties was to create an installment obligation and not a conditional obligation. Piñeiro was the person who drafted the contracts of June 24, 1986 and to whom the letter-contract of October 13, 1982 was addressed to. His testimony lacks all value as evidence because in his deposition taken on June 24, 1986 (Exhibit 41), when referring to the August 24, 1982 contract, Piñeiro specifically admitted that the parties agreed that the $300,000 payment for the option was contingent upon the result of operations, contingent upon the corporation [American] profits for five subsequent years. See pages 316-318 of the Appendix, Exhibit 41. Moreover, in said deposition, when referring to the October 13, 1982

letter-contract, Piñeiro specifically admitted again that the $300,000 were subject to company profits, were contingent upon said profits. See pages 319 and 320 of the Appendix, Exhibit 41. Said deposition was admitted into evidence. Upon making his determinations of fact and legal conclusions, the judge of instance completely disregards the Piñeiro deposition and only makes reference to the testimony said plaintiff gave at the trial.

The testimonies of Rodríguez and Reiss do not deserve credit either. Both accepted the clear and precise terms of the August 24, 1982 contract that establishes a conditional obligation and not an installment obligation. Furthermore, Reiss was the person who drew up the October 13, 1982 agreement in the name of Carrera and American Chemical. See **Exhibit 12**. The evidence of record shows, on the other hand, that Reiss was fired by Carrera in 1983 because that company lost more than $2.5 million under his administration. His testimony was obviously the result of the resentment that naturally arises as a consequence of these circumstances. It is also fitting to point out that (1) the trial court based its determinations and conclusions on a proposed judgement that was presented ex parte by the plaintiffs-appellees; and (2) the trial court rejected the offer made by defendant to present a pleading at the end of the trial hearing, stating that they did not wish to have pleadings presented. In those circumstances, this Court should meticulously scrutinize the determinations and conclusions whose review is requested in this appeal.[2] This is clearly impossible if the writ is not issued and the transcript of pertinent evidence is raised.

9. The findings on the merits of this appeal "...are important for the public interest..." 19A(3). The life of the Law exists in the particular and not in the general. As Holmes showed in his famous

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2 *Malavé v. Hospital de la Concepción*, 100 D.P.R. 55, 56-67 (1971); *Román Cruz v. Díaz Rivas*, 113 D.P.R. 500, 508-509 (1982); *Arroyo v. Rattan Specialties, Inc.*, 117 D.P.R. 35, 42-43 (1986); Cf. *In Re Las Colinas, Inc.*, 426 F.2d 1005, 1008-1010, (1st Cir. 1970); *Roberts v. Ross*, 344 F.2d 747, 751-753 (3rd Cir. 1965); *Flowers v. Crouch-Walker Corp.*, 552 F.2d 1277, 1284-1285 (7th Cir. 1977); *Louis Dreyfus & Cie. v. Panama Canal Co.*, 298 F. 2d 733, 737-739 (5th Cir. 1962).

dissident vote in *Lochner v. New York*, 198 U.S. 45, 75-76 (1905), general propositions do not resolve concrete cases. And the center of gravity of findings in all disputes is always found in the facts. It is completely illusory to assume that the judgement in a concrete case depends mainly on the standards of law that litigants and judges invoke. *Ex facto oritur ius.* Therefore, it is of vital importance that this Court not forsake the litigants facing the determinations of fact that the trial courts make.

In order to achieve an adequate measure of control over the determinations of fact made by the trial courts, pursuant to the standard that the court of review will not set aside determinations of fact based on oral testimony unless same are clearly mistaken, this Court must examine the totality of pertinent evidence that the court of judgement had before it when sufficient indications exist that its determinations are in conflict with the most rational, just and lawful balance of evidence received. *Maryland Casualty Co. v. Quick Const. Corp.*, 90 D.P.R. 329, 336 (1964); *Abudo Servera v. Autoridad de Tierras de Puerto Rico*, 105 D.P.R. 728, 731 (1977). The appeal for review presented in the case of record shows, based on the documentary evidence received, that the intention of the parties was to create a *conditional* obligation in which the deferred price depended upon the net profits that American would have for a period of five years, and not an installment obligation as the trial court determined. Moreover, it is shown there that the testimonies of plaintiffs Piñeiro and Rodríguez and of Mr. Richard Reiss do not deserve any credit whatsoever nor can prevail (a) in view of their actions simultaneous to the contracts signed between the parties, and (b) in view of the fact that plaintiff Piñeiro admitted, in the deposition that was taken before the trial and was received in evidence, that the obligation created was a conditional one subject to the net profits of American Chemical and not an installment obligation.

As far as the determination to the effect that appellants owe $290,000 to appellees, the appeal for review (pages 14-16) states that there is no evidence in the record that American Chemical had sufficient profits to justify the payment of that amount to appellees. To prove it, we have turned to the uncontested evidence presented in the trial and received by the trial court. In short, up to where the restrictions imposed by the Regulations at the stage of requesting the

writ of review allow, we believe to have shown that those determinations of essential facts do not represent the most just balance of the totality of evidence received. This will be completely verified upon issuing the writ and examining the transcript of pertinent evidence.

When finding on the merits of the appeal, this Court will have the opportunity to set guidelines that warn judges of instance and attorneys that it proposes to exercise an effective measure of control over the determinations of fact made in instance. Presently, the impression exists that this Supreme Court has completely relinquished its authority to review the determinations of fact made by trial courts to justify their judgments. This is due in good measure to the manner in which the review mechanism for civil cases has worked. It is necessary to bring a clear and decisive message to the judges and attorneys that participate in civil litigation that that general impression is wrong and that this Court will review the determinations of fact by issuing the writ of review when sufficient indications exist that they are in conflict with the most rational, just and lawful balance of evidence received. That warning shall no doubt lead to great benefits in the administration of justice in our country. The most delicate and important duty of the trial courts involves evaluating in a precise and meticulous manner all of the pertinent evidence and making determinations that reflect the real and true facts involved in the litigation. The belief that this Court proposes to exercise an effective measure of control over said determinations will serve as a stimulus to judges and attorneys to better the process that takes place in instance regarding the facts. One of the essential duties that a court composed of several judges fulfills when it reviews the findings of trial courts is: "...[to assure] the decision-makers at the first level that their correct judgments will not be, or appear to be, the unconnected actions of isolated individuals, but will have the concerted support of the legal system; and [to assure] litigants that the decision in their case is not prey to the failings of whichever mortal happened to render it, but bears the institutional imprimatur and approval of the whole social order as represented by its legal system. Thus, the review for correctness serves to reinforce the dignity, authority, and acceptability of the trial, and to control the adverse

effects of any personal shortcomings of the basic decision-makers." Carrington, Meador & Rosenberg, *Justice on Appeal* (1976), 2.

WHEREFORE, appellants respectfully request this Supreme Court to reconsider the decision issued on April 5, 1991 and issue the writ of review requested.

Respectfully submitted.

I CERTIFY: I have sent a copy of the present Motion to Reconsider, by hand, to Atty. A.J. Bennazar Zequeira at his office located on the 15th floor, Office 1501 of the Banco Popular Center Building, Hato Rey, Puerto Rico 00918.

In San Juan, Puerto Rico on April 22, 1991.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (Signed. Illegible).
HECTOR SALDAÑA
EGOZCUE
BAR MEMBER NO. 6959

By: (Signed. Illegible).
GRACIANA M. GONZALEZ
HERNANDEZ
BAR MEMBER NO. 10338

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Daniel Tomlinson 8/28/91
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

Carlos M. Piñeiro Crespo, Et Al.,	* No. RE91-146	* REVIEW
	*	*
Plaintiffs-Appellees,		
	*	*
vs.		
	*	*
American Chemical Corp. and/or American Chemical, Inc., Et Al.,	*	*
	*	*
Defendants-Appellants.		
----------	*	*

MOTION TO RECONSIDER DENIAL OF THE REQUEST FOR EVIDENCE TO BE TRANSCRIBED

TO THE HONORABLE SUPREME COURT:

Come now defendant-appellant represented by the undersigned attorneys and very respectfully state, allege and pray:

1. On March 18, 1991 the party appearing herein presented before this Court a Motion Requesting Transcript of Evidence of the case, subject of the present appeal. This Court's decision of April 5, 1991 denying the request for review had the effect of also denying the March 18, 1991 motion referred to.

2. We respectfully believe that this Honorable Court can verify that the determination that the parties created an installment obligation, and not a conditional one, is incorrect and does not represent the most rational, just and lawful balance of the totality of evidence, when it examines the transcript of evidence.

3. The trial court based the determination on the nature of the obligation in the testimonies of Mr. Piñeiro, Mr. Reiss and Mr. Rodríguez. Nevertheless, said evidence was contested and/or contradicted, let us see:

A. Mr. Carlos M. Piñeiro testified that the $300,000 payment referred to in the August 24, 1982, contract (Exhibit 10 of the Petition for Review), was not subject to the future profits of the company. Nevertheless, this was contested by the admissions of the witness during his deposition taken on June 24, 1986 that was offered and admitted into evidence as defendants' Exhibit H.

Plaintiff Carlos M. Piñeiro ratified the conditional or contingent character of the obligation when he stated the following in the deposition referred to:

> "P. Let's mark, for the record, the letter that the witness identified as Exhibit No. 2. Whose idea is that formula that is established in this letter that we have marked as Exhibit No. 2?
>
> R. Well, that one was discussed after having discussed many formulas like this one in the other letter, with Blanes, Richard Risk, Joaquín Rodríguez and me, and we came to that formula.
>
> P. And who is the structure of that manner is what I am asking. That is, from which side does that structuring come, from your side, the representatives of Pigaro, or from Carrera's side?
>
> R. Well, I would say that if anyone structured it we did, because we were the ones always submitting negotiating formulas, as was seen in this other letter and was accepted in a meeting and later it was decided to be put in writing.
>
> P. And what is the reason for your understanding that the figures mentioned in that letter, in the manner in which they are mentioned in that letter, are contingent upon the corporation profits for five subsequent years?
>
> R. Because it was determined that way. It is participation by means of dividend. That is, it has two forms of payment; at the time of closing the transaction, the fifty-two thousand five hundred and eighty-four dollars. And they were supposed to hand over some shares to me which they never gave to me, nor have I seen them yet. And those shares would have a dividend of 25% up

to the amount of three hundred thousand dollars in the next five years, whichever came first.

P. If the corporation earned money?

R. Yes, that was while we stayed on.

P. That is, that you were contingent upon the result of operations?

R. Correct. And that is what we cannot offer the rest of the shareholders, if we stayed on. And I add, to a company that had not been earning profits; afterwards we were contingent upon that we had agreed to that.

P. Whatever there may have been?

R. Yes. (With his head). And the rest got advances." See pages 316, 317 and 318 of the Appendix, **Exhibit 41** of the Petition to Review.

Later in the same deposition, but referring to the letters-agreement of October 13, 1982 (Exhibits 11 and 12 of the Petition for Review), Mr. Piñeiro stated the following:

"P. How do you explain that what is stated on the August 24, 1982 document is implemented as you say throughout those documents?

R. Well, I see it so clearly, counsel.

P. Explain it to me?

R. Well, if you add the fifty-two thousand dollars and the three hundred thousand dollars in paragraph one it adds up to the same amount that has been implemented with three hundred fifty-two thousand five hundred eighty-four, that is, you can see there is no difference at all.

P. That is, that the same amount that Mr. Richard's letter to you talks about is the same amount that this letter talks about?

R. It is the implementation of that agreement.

P. And that the option is then really sold for one dollar?

R. And other valuable considerations that are these three hundred fifty thousand...

P. Those three hundred fifty thousand dollars.

R. ...which fifty-two thousand are to be given at the time this transaction that is talked about here in the first paragraph is reached, and the difference, well, rests with the management shares that, I repeat, I have never seen, and the 25%.

P. I'm sorry. The three hundred and fifty-two thousand dollars were subject to, were contingent upon the company's profits?

R. No, sir.

P. Why?

R. The fifty-two thousand dollars were a down payment, and it was the three hundred thousand dollars that was subject to the company's profits.

P. Is that how you understand the transaction?

R. That was the transaction, counsel.

P. But is that stated here in that October 13 document?

R. That was the spirit of the negotiation." See pages 319 and 320 of the Appendix, **Exhibit 41**.

The previous declaration constitutes an admission by a party, admissible in evidence (paragraph (A) of Rule of Evidence 62 of 1979), that constitutes affirmative evidence against plaintiff's theory and discredits the credibility of the witness. [Paragraph (B) (5) of Rule of Evidence 44 of 1979].

Therefore, Mr. Piñeiro's testimony in court regarding the nature of the obligation had to be disregarded, and the literal meaning of the written contracts that contain the conditional character of the obligation should have prevailed, which was duly confirmed by the admissions of coplaintiff Piñeiro.

B. Reiss testified on direct examination that it dealt with an installment obligation and the court believed said declaration in spite of the fact that he admitted on cross-examination that the deal presented to the Carrera Board of Directors and which they approved, is that which appears in the text of the August 24, 1982 contract (Exhibit 10 of the Petition for Review). The terms that appear in the August 24, 1982 contract are contrary to those stated by Reiss in his direct examination, which inevitably leads to the conclusion that the

Carrera Board of Directors approved the assumption of a conditional obligation and not one in installments as he testified.

Reiss also admitted on cross-examination that at no time was the Carrera Board of Directors informed that the deal involved committing themselves to pay plaintiffs $300,000, regardless of whether American Chemical had profits or not. Finally, Reiss admitted that the contracts signed on October 13, 1982, constituted the agreements of the parties. Without any doubt, the contracts signed on October 13, 1982 (Exhibits 11 and 12 of the Petition for Review), confirm the conditional character of the obligation, contrary to what was stated in his direct testimony.

The admissions made by Reiss in his cross-examination countered what he had stated in his direct examination regarding the nature of the obligation. The aforementioned, added to the fact that Mr. Richard Reiss admitted that his resignation as president of Carrera was requested, discredits the credibility of the witness, because of contradictions as well as bias or partiality. (Subparagraph (B) (4) of Rule of Evidence 44 of 1979).

C. Coplaintiff Joaquín Rodríguez García, who holds a Master's in business and a Juris Doctor degree, stated in his direct testimony that Carrera's obligation was in installments and was not conditioned by future American Chemical profits. He stated, furthermore, that the documents executed on October 13 regarding the option were temporary. Rodríguez García testified that the document that should have been signed should have been an extensive one, and the reason the transaction was closed on October 13 was because Carrera had already paid the American Chemical Corp. debt with Walter E. Heller & Company one or two days before, therefore, he signed under duress. Rodríguez García added that the information regarding the fact that Carrera had paid the Walter E. Heller & Company debt before October 13, 1982 was given to him by his partner Carlos M. Piñeiro.

In cross-examination when asked about what conditions the document for the sale of the option should have had and which he stated should have been an extensive one, the witness answered that he did not know what conditions said contract should have had.

The witness was also confronted with defendants' Exhibits K and L during cross-examination, which are the documents that credit the

payment of the Walter E. Heller debt on behalf of Carrera. Same show that said debt was paid the day after closing, that is, October 14, 1982, and that the document executed between American Chemical and Walter E. Heller & Company was signed by Mr. Carlos M. Piñeiro before Notary Public William Joseph Luckeroth on October 14, 1982, with affidavit number 1831 of said notary. Exhibit L is made up of the cancelled check drawn by Carrera to the order of The Chase Manhattan Bank for the amount of $856,901.61 and Carrera's requisition to said bank to issue a manager's check in the same amount to the order of Walter E. Heller & Company, whose documents are dated October 14, 1982.

There is no doubt that the credibility of witness Joaquín Rodríguez García was discredited and the trial court should not have given him credibility regarding the nature of the obligation, moreover when same was found in the text of the written contracts.

4. Plaintiffs presented the expert testimony of CPA Jorge Torres Vallés to the effect of trying to establish that $500,000 was a reasonable amount for the American Chemical shares. He presented some figures to justify that the American Chemical shares were worth $500,000. The witness stated that he got the figures he used for his computations from the computations made by defendants' expert. CPA Torres Vallés is advised during cross-examination that when he copied said figures he made the mistake of transposing numbers; he admitted that he was not aware of same and as a consequence, he then admitted that in order to "balance" his computations he made up an entry in his analysis. This fact inevitably forces the ruling out of the expert opinion regarding the worth of American Chemical Corp. shares.

5. On their turn, defendant-appellant presented the testimony of Mr. Antonio Blanes Carrera, who stated that what he and the Carrera Board of Directors accepted was the offer made by Mr. Piñeiro through his letter-contract of August 24, 1982. (Exhibit 10 of the Petition for Review). That Carrera's obligation with plaintiffs was conditioned upon the future profits of American Chemical; that at no time did he agree to or authorize to agree to something contrary to this. Blanes testified that Reiss was authorized to actualize the transaction implementing the agreements of the referenced letter. Mr. Blanes added that he did not participate in the closing of the

transaction and that subsequently, while preparing himself for the deposition taken in the present case, he became aware of the changes made between the letter-contract of August 24, 1982, (Exhibit 10 of the Petition for Review) and the letter-contract of October 13, 1982, (Exhibit 12 of the Petition for Review) for the tax benefit of plaintiffs, but always keeping the conditional nature of the obligation.

Furthermore, Mr. Blanes testified that the resignation of Mr. Reiss as President of F. & J. M. Carrera was ordered due to the approximately $2.5 million Carrera lost during his administration.

Furthermore, defendant-appellant presented the testimony of Mr. Néstor Irigoyen Matos. Mr. Irigoyen did not participate in the negotiations between the parties, but stated, regarding the nature of the obligation, that if Carrera's obligation with plaintiffs had not been of a contingent character, it would have been necessary to make an entry in the company's book reflecting a debt in favor of plaintiffs. This was not done nor did Mr. Reiss instruct him to do so, which confirms the conditional nature of the obligation.

Carrera presented CPA Diego Chévere as their expert witness, who testified on the process of reappraisal of assets and its reasonableness; the reasonableness of interest charged by Carrera to American Chemical for monies loaned to the latter; and the total benefits of American Chemical during the period made up from October 13, 1982 to October 31, 1987.

6. We respectfully believe that from the transcript of the testimonies of Mr. Piñeiro, Mr. Reiss, Mr. Rodríguez and Mr. Blanes, together with the documentary evidence regarding the transaction between the parties, this Honorable Supreme Court will be able to confirm the conditional nature of the obligation, subject of this dispute; therefore, that the trial court judgement is clearly incorrect and does not represent the most rational, just and lawful balance. It is fitting to point out that the need for the transcript of evidence becomes imminent when considering that the court of judgement based its judgement on a project presented ex parte by the plaintiff-appellee, as indicated in the petition for review.

WHEREFORE, we very respectfully request that this Honorable Supreme Court in reconsideration grant the request of defendant-appellant to transcribe the evidence of civil case number 85-1797 of the Superior Court of Puerto Rico, San Juan Part, or at

least the testimonies of plaintiffs Piñeiro and Rodríguez and of witnesses Reiss, Torres Vallés, Blanes, Irigoyen and Chévere.

RESPECTFULLY SUBMITTED.

I CERTIFY: I have sent a copy of the present motion by hand to Atty. A.J. Bennazar Zequeira at his office located on the 15th floor, Office 1501 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

In San Juan, Puerto Rico on April 22, 1991.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (Signed. Illegible).
HECTOR SALDAÑA
EGOZCUE
BAR MEMBER NO. 6959

By: (Signed. Illegible).
GRACIANA M. GONZALEZ
HERNANDEZ
BAR MEMBER NO. 10338

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Daniel Tomlinson 8/28/91
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

Carlos M. Piñeiro Crespo, Et Al.,	* No. RE91-146	* REVIEW
	*	*
Plaintiffs-Appellees,		
	*	*
vs.		
	*	*
American Chemical Corp. and/or American Chemical, Inc., Et Al.,	*	*
	*	*
Defendants-Appellants.		
----------	*	*

OPPOSITION TO MOTION TO RECONSIDER

TO THE HONORABLE SUPREME COURT:

Come now plaintiffs-appellees through the undersigned legal representation, and very respectfully submit the following opposition to the Motion to Reconsider presented by defendants-appellants:

1. On April 5, 1991, this Honorable High Court issued a decision denying the captioned appeal.

2. On April 22, 1991, appellants presented a motion to reconsider regarding the aforementioned decision of April 5, 1991.

3. They insist that in their writ of review they "showed" this High Court that the judgement appealed is unjust and legally incorrect and that "sufficient indications" exist to show it is in conflict with the most rational, just and lawful balance of evidence presented before the Honorable Trial Court.

4. Moreover, paradoxically, far from sticking to new or additional indications related to the litigation in their argument, appellants introduce totally extrinsic criteria to the legal and factual disputes that the Honorable Judge of Instance considered and awarded and whose review by this Honorable High Court had been requested.

5. Faced with the image of what a debtor in bad faith is, confirmed by the evidence of the greatest value, they question the delicate task of adjudication displayed by the Trial Court, they question this Honorable High Court's exercise of discretion, very particularly in light of the provisions of Rule 3(a) of the Supreme Court's Regulations, they imply that only a "minority" determined the result of the appeal, and wrapping themselves in the flag of "public interest" they very boldly dare to affirm that "when finding on the merits of the appeal, this Court will have the opportunity to set guidelines that will warn judges of instance and attorneys that it proposes to exercise a measure of effective control over the determinations of fact made in instance." (Motion to Reconsider, page 9).

6. None of these statements have any merit whatsoever. This case does not show the slightest indication of passion, prejudice, partiality or error in the appreciation of evidence on the part of the trial court. Moreover, the conclusions of law are legally correct. Let us see.

I. SUMMARY OF OBJECTIVE DATA ON THE HEARING AND ADJUDICATION OF THIS CASE

This case was originally being heard before the late Honorable Judge Nelly Ortiz Torres. Because of the cessation of her duties as judge, said hearing was assigned to another judge and newly scheduled for March and subsequently for May of 1990.

The magistrate that held said hearing, after analyzing the procedural circumstances of the case during two extensive meetings with the attorneys for the parties, chose to start the trial once again *from the beginning* with their consent. This matter involves a trial that lasted exactly 12 days. (See Determinations of Facts, Legal Conclusions and Judgement, page 3 Appendix of the Appeal for Review). During said period the judge had the opportunity to listen, see and observe the manner in which the witnesses of both parts testified, experts as well as witnesses with personal knowledge of the facts; he took extensive and detailed notes of the trial and questioned all of the witnesses every time he deemed it necessary. Five people testified for plaintiffs. One of them, C.P.A. Jorge M. Torres Vallés was an expert witness; the rest gave evidence of their own personal knowledge because they were direct participants (Mr. Carlos Piñeiro, Mr. Joaquín Rodríguez and Mr. Richard Reiss and Mrs. Irma

Belaval) in the negotiations and events that culminated in the close of the transaction to purchase and sell the option of the shares that is the subject of this litigation. Mr. Reiss, President of Carrera at the time, and by direct order of appellants, just as evidence shows, represented them during said process of negotiation and closing the transaction. Also, ample evidence of personal knowledge was presented of all of the steps taken by defendant-appellant, prior to the close of the transaction, in order to thoroughly learn everything needed regarding the company it was acquiring. Abundant uncontested evidence was equally presented regarding the innumerable steps taken by defendants, after the purchase, with the sole and deliberate purpose of not complying with the stipulated obligation. With surprising boldness, appellants regret that the Honorable Trial Court decided as it did based "exclusively" on the testimonies of Mr. Reiss, Mr. Piñeiro and Mr. Rodríguez. They leave out that said testimonies were confirmed by oral and documentary evidence, including Mr. Irigoyen, Carrera's accountant and witness for appellants. Appellants seek to have all of that evidence disregarded in order to use the solitary and interested testimony of one sole witness, the president of Carrera, who fraudulently refuses to pay.

Mr. Antonio Blanes Carrera, by his own admission supported by oral and documentary evidence, only participated during the initial negotiations that gave rise to the transaction. He subsequently delegated to Mr. Reiss, President of the purchasing company, the bulk of the negotiation and completion of the final agreement. As far as the expert evidence is concerned, as can be inferred from the determinations of fact, the appellants' own evidence supported facts that constitute a clear violation of the stipulated agreements. The magistrate of instance also had the opportunity to evaluate the voluminous documentary evidence offered and admitted, in light of the totality of the evidence.

At this time we call this Honorable High Court's attention to the concrete reality that during twelve days of hearings the presiding judge had the opportunity to evaluate and weigh the manner in which the persons expressed themselves during oral testimony, assessed the elements of credibility that can be inferred from the witness' conduct, and harmonized irreconcilable testimonies. Furthermore, under the

protection of a correct determination of the law, he evaluated and weighed all of the documentary and expert evidence.

This High Court has repeatedly supported the doctrine of conclusiveness before the superiority of oral declarations and only if faced with findings of fact that are in conflict with the most rational, just and lawful balance of the totality of evidence is that it shall consider them erroneous. *Abudo Cervera v. A.T.P.R.*, 105 DPR 728, 731 (1977); *Zambrana v. Hospital Santo Asilo de Damas*, 109 DPR 517 (1980); see also *Sanabria v. Sucesión González*, 82 DPR 885 (1961).

II. RULE OF EVIDENCE 69(B) AND ITS RELATIONSHIP WITH THE LETTERS OF AUGUST 24, 1982 AND OCTOBER 13, 1982

Appellant asserts that this case offers the opportunity of ruling on the law "by setting the scope of Rule of Evidence 69(b) and its relationship with the standards regarding interpretation of contracts as established by the Civil Code." They allege that the Trial Court incorrectly admitted and considered evidence "to amend" the terms of one contract dated August 24, 1982 and another dated October 13 of that same year, and that it allowed for the obligation contained therein to be transformed from a conditional obligation to an installment obligation. Appellants insist that the contents of both letters included *all* of the terms and conditions that made up the true and final intention and that, therefore, it is an integrated contract.

Once again, appellants insist upon attributing errors of law and in the evaluation of evidence to the Trial Court, because of the mere and straightforward fact that once having considered the totality of admitted evidence, it did not believe or support their theory. *That is simply what their position comes down to.* Appellant would have wished that their evaluative opinions, their interpretation of the intention of the parties and their solely subjective perceptions would have been believed and drawn up as determinations of fact. They would have also wanted to omit the testimonies of the persons who precisely proved they broke the terms of payment of a stipulated price, in order to use the convenient theory of a stubborn debtor, determined not to pay. The terms established in the letter-contracts of August of 1982 had to necessarily be interpreted in light of the main transaction

agreed upon between the parties: *the sale and transfer of American Chemical Corporation to Carrera Enterprises, which was never subject to any condition whatsoever*. That *integrated* sale contract was the one that was never put in writing, for reasons attributable solely to defendants-appellants themselves. The evidence of both parties showed this fact indisputably. (See Exhibit 11, Petition for Review, page 113). The letters, on their part, *represent the payment mechanism agreed to* in order to carry out said transaction. For this reason, the Court's decision to allow the oral evidence regarding the circumstances under which the agreement was made, or that were related to it in any manner, constitutes a legal error. *That is precisely one of the situations that Rule 69(b) contemplates.*

This Court has repeatedly expressed that the "Parole Evidence Rule" is a standard of substantive law and not of evidentiary law. *Morales v. Díaz*, 24 DPR 739, 743 (1917); *Marina Ind. v. Brown Bovery Corp.*, 111 DPR 64 (1983). We also know that the exceptions to the prohibition of extrinsic evidence are so numerous that it has reduced the standard to "almost nothing, so to speak." *Primer Examen de las Reglas de Evidencia de 1979: Comentarios y Recomendaciones*, Judicial Conference, Thirteenth Full Meeting Supreme Court of Puerto Rico, page 489. The following is stated there:

> "Professor Chiesa summarizes the exceptions to the rule under the present Rule 69(b):
>
> 1) All of the terms and conditions of the agreement have not been included. 2) The agreement does not contain the true intention of the parties. 3) The agreement does not represent the final intention of the parties. 4) The agreement is alleged to have an imperfection or a mistake. 5) The soundness of the agreement constitutes the fact in dispute. 6) The extrinsic evidence refers to the circumstances under which the agreement was made or that are related to it, such as the situation of the object entered into or the intention of the parties, or to prove illegality of fraud."

Certainly, this case, as we have shown, represents the living exception to the rule of extrinsic evidence. The basic controversy,

breach of contract, revolves precisely around the letters that defendants would have as the sole element of judgement upon which to examine the controversy on the breach. The Trial Court obviously did not commit any legal error whatsoever when it permitted evidence in order to clarify all of the terms and conditions of the agreement, the true intention of the parties, the final intention of the parties and the circumstances under which the agreement was made or that are related to it.

III. THE RATIONAL, JUST AND LAWFUL BALANCE OF ALL OF THE EVIDENCE RECEIVED SHOWS THAT AN INSTALLMENT OBLIGATION AND NOT A CONDITIONAL OBLIGATION WAS MADE BETWEEN THE PARTIES

Supporting themselves exclusively on the alleged error regarding admission of extrinsic evidence and based on a distorted and accommodating interpretation of the facts, appellants allege that the Court allowed "the conditional obligation that was clearly stipulated there" to be transformed into "an installment obligation." It is surprising how when they claim this error, appellants fail to mention a series of facts broadly supported by the evidence, in light of which, even accepting that it is a conditional obligation solely for the sake of argument, their actions caused the breach of obligation. (See Determinations of Facts 43-70). They boldly fail to mention the managerial decisions and actions that completely weakened the payment mechanism stipulated by the parties. Among others, the legal entity of American Chemical Corp. disappeared by unilateral decision of the purchasing company and its assets and operations were reorganized in a new entity, "American Chemical, Inc.", which was not incorporated until 1986. This new corporation or entity was sold to certain members of the Carrera family in July of 1984, by which it ceased to be a subsidiary of F. Carrera and Bros., Inc. The Carrera management *relieved* Mr. Piñeiro of the presidency of American Chemical Corp. and transferred him from Cataño to Hato Rey to work with F. & J. M. Carrera, Inc. Contrary to what the parties had agreed to, interest charges payable to Carrera started being made in the American Chemical accounting books, which had the immediate effect of raising costs *and consequently reducing the*

profits of American Chemical; the auditors were instructed arbitrarily and on whim to make adjustments to their convenience, according to whether they were dealing with a financial statement, a tax form or merely information in an accounting book. Their own expert evidence confirmed that the American Chemical assets were emptied into a new entity and how at the request and convenience of Mr. Blanes Carrera, President of the Board of Directors, instructions were given to make changes in the numbers that logically prevent determination of "the net profits" to which they now seek to condition the payment of the obligation.

In view of the facts such as those described, to *which* of the "contingent" profits resulting from operations did the payment of the obligation have to be accommodated? To the American Chemical *Corp.* ones or to the American Chemical, *Inc.* ones? To the earnings reflected in the financial statements, the tax forms or the accounting books? Obviously, in light of these facts, it is appellants' theory that cannot constitute the most rational, balanced or just appraisal of the totality of the evidence.

On the other hand, based on the totality of the evidence and not on the narrow and accommodating viewpoint that appellants seek to impose, the trial court did not commit any error whatsoever when it determined that the true contractual obligation consisted in the purchase and sale of American Chemical Corp. in order to affiliate it with the Carrera corporate family. Initially an offer existed from the Carreras to purchase the common and preferred stock and the option which is the subject of this lawsuit. Subsequently, all of the investigations regarding the accounting and manufacturing operations of American Chemical Corp. having been carried out by representatives of the purchasers, the parties finally agreed on the closing of the sale transaction of October 13, 1982. *This obligational bond was never subject to any condition whatsoever.*

Appellants' contention is made deliberately to confuse, and what they are attempting to do is conveniently select isolated terms and conditions that only refer to the manner of making the payment of a previously stipulated price, *and not to the condition that determined the origin of an obligation.* It is unacceptable to assert that the obligation of selling and purchasing the option was subject to American Chemical Corp. profits. The obligation began at the same

moment that it was agreed to carry out the transaction for a fixed price, deferred, and to the convenience of both parties. The letter dated October 13, 1982 reflects a contractual obligation of acquiring the entirety of American Chemical Corp. common and preferred stock. *The option*, which was the only thing left pending to complete said transaction, according to the undisputed facts, had a specific price -$352,584.00- payable annually for a period of five years, based on receiving two management shares which would have a dividend equal to 25% of the profits of American Chemical Corp. These profits were projected by the purchasers themselves prior to the acquisition, according to the admissions of Mr. Irigoyen himself, in order to lighten the burden of interest and other administrative charges to American Chemical and transfer same to F. & J. M. Carrera. See Determination of Facts number 33, Judgement, that refers to a report drafted by Mr. Irigoyen himself, in representation of appellants, as Vice-President of Finance and Comptroller of Carrera. The risk that there would not be profits was never considered by the parties. The fact that they would enjoy tax exemption was precisely one of the main considerations that motivated the acquisition of the entirety of shares by Carrera. That is the correct finding of the trial court.

In conclusion, the obligation established and the manner of making the payment stipulated by the parties must necessarily be distinguished. The obligation to sell and purchase was never subject to any doubt of any kind. As all installment obligations, *its inception* was not subordinated to any event. *Only the stipulated terms affected the duration of the obligation.* "As DeBuen says, the obligation submitted to installments begins at the moment in which the establishing act is held; the installment only influences in determining, as far as the beginning or as far as the end, the duration of its effects." Puig Peña, *Compendio de Derecho Civil Español, Obligaciones y Contratos*, Volume 3, page 134. The parties established a stated period of five years to liquidate the obligation and as far as the alleged "condition" -"net profits"- the evidence broadly shows that before closing the transaction definitely, appellants thoroughly examined the manufacturing and accounting operations of American and made their own projections of profits. That is the true explanation of the terms and conditions of the letters and contracts, and not the interpretation that they are attempting to give

now for the sole purpose of breaching the stipulated obligation and not paying.

WHEREFORE, defendant-appellee respectfully requests this Court to reaffirm its determination issued on April 5, 1991, in which it denied the appeal for Review presented by appellants.

In San Juan, Puerto Rico on May 1, 1991.

I CERTIFY: I have sent a copy of this document to attorneys Héctor Saldaña Egozcue and Graciana M. González Hernández, at Banco Popular Center Building, 10th Floor, Office 1031, Hato Rey, Puerto Rico 00918.

RESPECTFULLY SUBMITTED.

GONZALEZ, BENNAZAR &
COLORADO
Attorneys for Plaintiffs
-Appellees
Banco Popular Center Building
15th Floor - Office 1501
Hato Rey, Puerto Rico 00918
Tel.: 754-9191
(Signed. Illegible)
By: A.J. BENNAZAR
ZEQUEIRA
Bar Member No. 5980
(Signed. Illegible)
By: CARMEN H. CARLOS
DE DAVILA
Bar Member No. 4594

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Daniel Tomlinson 8/28/91
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑEIRO CRESPO, ET AL.,	* No. RE91-146	* IN RE: REVIEW
	*	*
Plaintiffs-Appellees,		
	*	*
vs.		
	*	*
AMERICAN CHEMICAL CORP. ET AL.,	*	*
Defendants-Appellants.	*	*

ANSWER TO OPPOSITION TO THE MOTION TO RECONSIDER

TO THE HONORABLE SUPREME COURT:

Comes now defendant-appellant represented by the undersigned attorneys and very respectfully states, alleges and prays:

1. On May 6, 1991, defendant-appellant received a copy of a document presented in the captioned case by plaintiff-appellee in opposition to the reconsideration requested through the motion presented on April 22, 1991.

2. Said document was filed with the court clerk's office of this Honorable Supreme Court at 4:47 p.m. on May 1, 1991. The envelope in which said motion was sent to the party appearing herein has two postal seals, one that is from an office postal meter which marks May 2 as the date in which the envelope was mailed. The other seal, that is from the postal service, marks May 3 as the date in which said envelope was mailed. See **Appendix 1**. According to the determination of this Honorable Supreme Court in *Ramos v. Condominio Diplomat*, 1986, 117 DPR, 641, 644 and 645, the date on which said motion was notified to the party appearing herein is May 3, 1991.

3. Given the aforesaid, the period of ten (10) days for the party appearing herein to express itself regarding the opposition presented by plaintiffs-appellees, as provided in paragraph (c) of Rule 31 of the Regulations of the Supreme Court (4 LPRA Appendix I-A), began running as of May 3, 1991.

4. In their opposition, plaintiffs-appellees argue but do not show this Honorable High Court that the determinations of facts made by the trial court in its judgement are supported by the evidence, and that same represent a rational, just and lawful balance of the totality of the evidence.

5. Plaintiffs-appellees state that the trial court had the opportunity to evaluate the voluminous documentary evidence admitted, implying that this Honorable Supreme Court should not review the trial court's determinations on the documentary evidence because there is no evident error in its interpretation. The reality is that in order to determine the nature of the obligation the a quo court disregarded the documentary evidence, that is, the contracts between the parties, and based same on extrinsic evidence without the existence of circumstances that allow for the exception to Rule of Evidence 69(B) of 1979.

In order to justify applying the exception of Rule of Evidence 69(B), plaintiffs-appellees argue that the "integrated" sale contract was the one that was never put in writing for reasons solely attributable to the party appearing herein.

This argument is invalidated in light of the admissions given by plaintiff, Mr. Piñeiro, in his deposition admitted into evidence and transcribed in the "Motion to Reconsider Denial of the Request for Evidence to be Transcribed." In addition, and confirming the existence of an integrated contract, Mr. Piñeiro admits the following in the same deposition, referring to the documents signed on October 13 (Exhibits 11 and 12 of the Appendix to the Petition):

> "P. Fine. When you come across these documents in your duties at Carrera, and see how the document that you ratified by signing is drafted, did you at any time request that it be clarified or that that document be amended because it was not what you wanted or understood it should be?

R. No, because I never thought that in the negotiation with Carrera I would reach this point, and that I would not even be given what I sold, that is, the payment of what I sold. I never thought it would get to this. Then I never thought that a deal that was extremely clear to me, but extremely clear because we discussed it for a long time, would reach this point where they would be telling me that what it says here does not mean what it says there. As far as I was concerned, I was confident that I was working in an business atmosphere with responsible people.

P. Fine. But the truth is that this mechanism that you say is created through those two documents dated October 13, 1982, from your understanding of the August 24, 1982 agreement, is it done in this manner for your tax benefit?

R. That is correct." (See Appendix 2 of this Motion that corresponds to pages 84 and 85 of the transcript of Mr. Piñeiro's deposition).

Mr. Piñeiro clearly admitted that the documents of August 24 as well as October 13, 1982, are the integrated sale contract of the option and he did not request any amendment or modification whatsoever because everything was "extremely clear" to him. Said admissions make the exception to Rule 69(B) of the Rules of Evidence of 1979 inapplicable, from same it is evident that the written agreements between the parties contain all of the conditions that represent the true intention of the parties. Note, furthermore, that Mr. Piñeiro admits to not requesting amendments to the written document because everything was clear, which shows that there is no imperfection in the document nor error in the agreement.

We respectfully understand that the present case presents a fitting situation for this Honorable High Court to establish definitive guidelines regarding the rule on the best evidence and on extrinsic evidence.

Moreover, this Honorable High Court has the authority to make its own determinations of fact after examining the documentary evidence. It is a fully established rule that this Honorable High Court is in the same position as the court of judgement to analyze the documentary evidence of the case and, to those ends, draw its own conclusions. *Chase Manhattan v. Emmanuelli Bauzá*, 1981, 111

DPR 708, 712; *Vega Torres v. Sucn. Mercado Riera*, 1978, 107 DPR 425, 428; *Miranda v. Editorial El Imparcial, Inc.*, 1971, 601, 618.

It is even further justified that this Honorable Supreme Court make its own determinations of fact by examining documentary evidence, that is, the written contracts between the parties, in light of the determinations in *Planned Credit of P.R., Inc. v. Page*, 1075, 103 DPR 245, 261 and 262, where it was established that:

> "We do not diminish the rule of respecting the determinations of fact of trial courts when we evaluate documentary evidence, because we hold the same position as primary forums regarding this, (10) *particularly when it appears that the oral evidence of both parties is basically directed towards explaining the content and scope of the documentary evidence produced as per their respective positions.*" (Our emphasis).

6. Plaintiffs-appellees state that the party appearing herein regrets that the determinations of the trial court were based on the testimonies of Mr. Reiss, Mr. Piñeiro and Mr. Rodríguez, and allege that said testimonies were confirmed by documentary and oral evidence, including the testimony of Mr. Irigoyen.

Plaintiffs-appellees argue but do not show this Honorable High Court what specific documentary evidence corroborated the testimonies of Mr. Reiss, Mr. Piñeiro and Mr. Rodríguez. Said lack is the product of a total absence of such corroborating documentary evidence. The written contracts that contain the agreement between the parties clearly contradict the testimonies of the witnesses referred to. In addition, as we have already pointed out, the admissions of one of them (Mr. Piñeiro), through the deposition taken and admitted into evidence, not only contradicted his testimony, but that of Mr. Reiss and Mr. Rodríguez as well.

From the determinations of fact themselves made by the trial court, it is clear that the determination that the obligation in dispute is one of installments, and not a conditional one, is based solely on the testimonies of Mr. Reiss, Mr. Piñeiro and Mr. Rodríguez. To that end, see the determinations of fact contained in paragraphs 18, 19, 20, 21, 23, 24, 25 and 26 of the judgement.

This Honorable Supreme Court may search in vain for documentary evidence to corroborate the testimonies of Mr. Reiss, Mr. Piñeiro and Mr. Rodríguez. On the contrary, in said search it will find that the documentary evidence contradicts what was testified by the men of reference. See Exhibits 10, 11 and 12 of the Appendix to the Petition for Revision.

Furthermore, no documentary evidence exists whatsoever demonstrating that the obligation assumed by Carrera was in installments because they had committed themselves to pay plaintiffs the amount of $300,000, regardless of the future profits of American Chemical. In his cross-examination, coplaintiff Piñeiro admitted that there did not exist any document or written contract, drafted by him or any other party, that established that Carrera had to pay plaintiffs the amount of $300,000 regardless of the amount of profits of American Chemical. On his part, Mr. Reiss admitted in his cross-examination that the agreements of the parties are those that appear on the documents signed on October 13, 1982 (Exhibits 11 and 12 of the Appendix to the Petition for Review), which reaffirms the conditional nature of the obligation.

7. Plaintiffs-appellees mention the testimony of Mr. Irigoyen within a context that gives the impression that he corroborated the nature of an installment obligation, in accordance with plaintiffs' theory. Said remark is not supported by specific indications of statements made during the trial by Mr. Irigoyen, because same do not exist. Mr. Irigoyen specifically testified that he did not participate in any way in the negotiations between the parties, therefore, the only thing he could confirm regarding the nature of the transaction was that same was not in installments since he had not been instructed nor requested to make an entry into the books of Carrera or American Chemical regarding an obligation to the order of plaintiffs. Furthermore, Mr. Irigoyen specifically indicated that if said obligation had existed, same would have had to have been entered as a debt in the corporation books. Clearly then the testimony of Mr. Irigoyen does not in any way corroborate the testimonies of Mr. Reiss, Mr. Piñeiro or Mr. Rodríguez, or that the obligation was deferred.

The testimonies of Mr. Reiss and Mr. Rodríguez were also contradicted by the reasons set forth in the motions already presented

before this Honorable High Court. Nevertheless, regarding the testimony of Mr. Reiss on the nature of the obligation, it must be added that his testimony was contradicted by the contract that he signed on October 13, 1982 (Exhibit 12 of the Appendix to the Petition for Review), which corroborates the conditional nature of the obligation. We cannot stop pointing out that the testimony of Mr. Reiss should be looked at with suspicion because it involves a person that was fired from Carrera, and it is natural that said testimony be influenced by prejudice or partiality. Paragraph (B) (4) of Rule of Evidence 44 of 1979. As far as the testimony of Rodríguez, apart from what was previously indicated, same is contradicted by the fact that he accepted the contents of the letters of August 24 and October 13, 1982, without any objection whatsoever, whose contents contradict what he testified regarding the nature of the obligation.

8. The rest of the witnesses for plaintiffs-appellees, Mrs. Irma Belaval and CPA Jorge Torres Vallés, did not know anything regarding the terms and conditions of the contract between the parties, since they admitted that they did not participate in the negotiations, the drafting of contracts or the executing of same.

9. Plaintiffs-appellees state that appellants seek to have the interested and solitary testimony of one sole witness adopted, the president of Carrera who is not mentioned by name, but they are obviously referring to Mr. Antonio Blanes.

The testimony of Mr. Blanes cannot be characterized as a solitary one because same is not only supported by the contents of the written contracts, but also by the admissions of Mr. Piñeiro through the deposition that was taken and admitted into evidence.

10. It is fitting to point out that none of the expert evidence of either of the parties dealt with the nature of the obligation between the parties. On the other hand, the testimony of Mr. Julio E. Carrera was not related to said topic, and that of Mr. Irigoyen, except for the statement as far as that an obligation to the order of plaintiffs was not entered, was not about the nature of the obligation, either. Therefore, the only evidence received by the trial court to use in making the determination on the nature of the obligation was the testimony of Mr. Reiss, Mr. Piñeiro, Mr. Rodríguez and Mr. Blanes; the documentary evidence consisting of the admissions of Mr. Piñeiro in the deposition taken in this case, whose transcript was admitted into

evidence, and the written contracts of August 24 and October 13, 1982.

11. Plaintiffs-appellees argue in a general manner that the expert evidence, including that of the party appearing herein, supported facts that establish a violation of the stipulated agreements. Nevertheless, they do not indicate what evidence in particular supports their argument.

They allege that the party appearing herein neglects to mention the managerial decisions and actions that weakened the payment mechanism stipulated by the parties. The truth is that Mr. Reiss, witness for plaintiffs-appellees, admitted that the whole administrative and corporative reorganization of American Chemical was done under his administration and with Mr. Piñeiro's participation. He also stated on cross-examination that said reorganization was not done to cheat anybody, but to improve the financial situation of the company, which was extremely precarious.

Plaintiffs-appellees state that the new corporation was sold to members of the Carrera family on July 1984. This fact is true, and regarding this it was stated in the trial court that if said sale had not taken place, in order to inject cash into F. & J. M. Carrera, Inc. which had lost $2.5 million, said corporation and its affiliates would have had to resort to protection under the Bankruptcy Law, which would have had a negative effect for plaintiffs-appellees and their claim.

They argue, furthermore, that contrary to what had been stipulated between the parties, charges started being made in the American Chemical accounting books that had the effect of increasing costs and reducing its profits. The undisputed evidence shows that all of the expenses charged to American Chemical were ordinary and necessary business expenses. Plaintiffs-appellees could not show even one sole expense that was not of an ordinary and necessary nature. Moreover, the results of American Chemical operations were duly audited by a recognized authorized public accounting firm and plaintiffs-appellees' own expert witness admitted that he could not question the financial statements of American Chemical because they were duly audited. The evidence clearly shows that the financial reorganization of American Chemical was beneficial for it, since it substantially reduced the operational expenses of said company,

turning it from a company that consistently lost money every year to a company that earned money.

Plaintiffs-appellees argue that Carrera committed itself to not charging American Chemical interest on the money loaned. Nevertheless, all of the witnesses for plaintiffs-appellees agreed that said agreement did not consist of any written document and much less written contracts. It would be illogical to think that Carrera, borrowing money from its line of credit and paying interest on said money, would loan same to American Chemical free of any charge for the purpose of benefitting coplaintiffs Piñeiro and Rodríguez and the effect of harming Carrera shareholders. Through the testimony of Mr. Irigoyen, the evidence showed that as soon as Carrera acquired American Chemical, and advanced money to their order, they began charging interest for same in the American Chemical books and this was carried on until the closing of the fiscal year ending March 31, 1983. Not until after Mr. Irigoyen resigned and the American Chemical accounting came under the control of Mrs. Belaval did said interest cease to be charged, a situation that lasted until July 1984 when Mr. Blanes instructed Mrs. Belaval to make the referenced interest charges.

Plaintiffs-appellees state that the expert evidence of the party appearing herein confirmed that American Chemical assets were emptied into a new entity, and how instructions were given at the request and convenience of Mr. Blanes to make changes in the numbers that prevented determination of net profits.

No one has denied that American Chemical Corporation assets were emptied into a new entity when the reappraisal of assets ("step up") was made. Nevertheless, plaintiffs-appellees fail to tell this Honorable High Court that the evidence showed that the person who ordered said process was Mr. Reiss, their own witness, and that he testified to the need of making said reappraisal in order to present a better financial picture of a company that was really insolvent, and as already indicated, the expert witness for plaintiffs-appellees themselves admitted that he could not question the American Chemical financial statements, thereby confirming the accurateness and reliability of said corporation's financial information.

Plaintiffs-appellees state that the parties never considered the risk of not having profits. Contrary to this and weakening said argument,

Mr. Carlos Piñeiro among the admissions he made in his deposition, admitted into evidence, stated the following:

> P. Whether the corporation earned money?
>
> R. Yes, that was while we stayed on.
>
> P. That is, that you were contingent upon the result of operations?
>
> R. Correct. And that is what we cannot offer the rest of the shareholders, if we stayed on. And I add, to a company that had not been earning profits; afterwards we were contingent upon that we had agreed to that.
>
> P. Whatever there may have been?
>
> R. Yes. (With his head). And the rest got advances."

See **Exhibit 41** of the Petition to Review.

The aforementioned reflects the degree of doubt that existed regarding the possibility of the company being able to sustain future profits, and considering this, coplaintiffs Piñeiro and Rodríguez decided to take the risk by stipulating a conditional obligation.

WHEREFORE, we very respectfully request this Honorable Court to reconsider the determination issued on April 5, 1991 and issue the writ of review requested.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico on May 8, 1991.

I CERTIFY: I have sent a copy of the present motion by hand to Atty. A.J. Bennazar Zequeira at his office located on the 15th floor, Office 1501 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565
By: (Signed. Illegible).
HECTOR SALDAÑA EGOZCUE
BAR MEMBER NO. 6959

By: (Signed. Illegible).
GRACIANA M. GONZALEZ
HERNANDEZ
BAR MEMBER NO. 10338

(Attached to the Answer to Opposition is a photocopy of an envelope addressed to Atty. Hector Saldaña Egozcue and Atty. Graciana M. González Hernández from González, Bennazar & Colorado. It shows a U.S.P.S. seal dated May 3, 1991 and an office correspondence stamp stating, "Received Saldaña & Vallecillo; May 6, 1991, 12:46 p.m.)

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R. I accept that I requested it.

P. ...because I was Atty. Ortiz Muria's partner at that time. It was not that you were requesting from me my services so that I would get those documents.

R. That is extremely clear.

P. O.K., fine. Let that be clear in the record because it can be misinterpreted.

R. I can clarify that it was when you and I were working on the Carrera things.

P. That is correct.

R. And then, well, I said to you, "Look Hector, do me a favor, try to get me these documents."

P. Fine. When you come across these documents in your duties at Carrera, and see how the document that you ratified by signing is drafted, did you at any time request that it be clarified or that that document be amended because it was not what you wanted or understood it should be?

R. No, because I never thought that in the negotiation with Carrera I would reach this point, and that I would not even be given what I sold, that is, the payment of what I sold. I never thought it would get to this. Then I never thought that a deal that was extremely clear to me, but extremely clear because we discussed it for a long time, would reach this point where they would be telling me that what it says here does not mean what it says there. As far as I was concerned, I was confident that I was working in an business atmosphere with responsible people.

P. Fine. But the truth is that this mechanism that you say is created through those two documents dated October 13, 1982, from your understanding of the August 24, 1982 agreement, is it done in this manner for your tax benefit?

R. That is correct.

P. O.K., fine. In Mr. José Carrera Rolán's deposition that was taken last week, a contract was included as an Exhibit to that deposition, Exhibit No. 5 to be specific, a

contract for the sale of shares among certain individuals who were Carrera shareholders and that through this document they are buying shares in American Chemical Corporation. Do you remember this document? Were you present?

R. Yes, sir.

P. I ask you, who got a copy of this document?

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For the District of Puerto Rico
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To be a correct translation
prepared by:
Daniel Tomlinson 8/28/91
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPREME COURT

CARLOS M. PIÑERO CRESPO, et al.	*	
Plaintiffs-Appellees	*	
vs.	* No. RE-91-146	REVIEW
AMERICAN CHEMICAL CORPORATION and/or	*	
AMERICAN CHEMICAL, INC., et al.	*	
	*	
Defendants-Appellants.	*	

RULING

San Juan, Puerto Rico, May 10, 1991.

Regarding the two motions for reconsideration filed by defendants-appellants, they are denied. The ruling is to be abided by.

Agreed to by the Court and certified by the Chief Clerk. Associate Justices Rebollo López and Andreu García would reconsider. Associate Justices Negrón García and Alonso Alonso abstained.

Francisco R. Agrait Lladó
Chief Clerk

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United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
made and/or submitted by the
interested party:
Signed Illeg.

A-121

Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

IN THE PUERTO RICO SUPERIOR COURT
SAN JUAN PART

CARLOS M. PIÑEIRO CRESPO, and his wife ZENAIDA CUBAS; JOAQUIN RODRIGUEZ GARCIA and his wife CARMEN L. BENITEZ and the respective conjugal partnerships constituted by them	*	CIVIL NUMBER 85-1797 (905)
Plaintiffs	*	
Vs.	*	IN RE:
AMERICAN CHEMICAL CORPORATION AND/OR AMERICAN CHEMICAL, INC.; F. CARRERA & BRO., INC.; F. & J.M. CARRERA, INC.; CARRERAITO INC.; RECAITO, INC.; JOHN DOE AND RICHARD ROE,	*	COLLECTION OF MONEY AND BREACH OF CONTRACT
Defendants	*	

FINDINGS OF FACTS; CONCLUSIONS OF LAW AND JUDGMENT

This case was brought before the Superior Court, Bayamón Part, on January 25, 1985, and at defendants' request, was later transferred to this Part.

In essence, plaintiffs allege that they are businessmen who owned some American Chemical Corporation common and preferred stock

and owned an option to acquire additional common stock, which, had it been exercised, would give said shareholders absolute control of the company. Said corporation, founded in the early sixties, has been engaged over the years in the manufacture of various products, among them chemicals and cleansers, cosmetics and detergents. As of a certain period, the firm also engaged in the purchase of other products for purposes of sales and distribution. With regard to its manufacturing operations, American Chemical Corporation, at the time of the transaction which is the subject of the lawsuit, enjoyed an industrial tax exemption.

Plaintiffs allege that they sold the aforesaid option to defendants and that the latter breached the payment terms of the price agreed upon.

Defendants answered by denying that a fixed price had been agreed upon, alleging that a price was agreed upon, based on certain contingencies, and counterclaimed by holding that they had overpaid plaintiffs under the terms of the contract between the parties.

Following a thorough process of discovery which it is unnecessary to discuss here, the case was set and commenced being heard before the Honorable Nelly Ortíz Torres on May 16, 1989. The hearing continued through the 17th and 18th, during which the testimony of two witnesses was received and a series of documents were admitted into evidence. Trial continuance was set for September of 1989, subsequently for October of 1989 and then for January of 1990. Meanwhile, the Honorable Nelly Ortíz ceased in her functions as a judge and the hearing was again reset for March and subsequently for May of 1990.

After analyzing the procedural situation of the case during two extensive meetings with the attorneys for the parties, the undersigned Magistrate, with the consent of the parties, opted to re-start the trial from the beginning.

Testifying for plaintiff were:

(1) Carlos M. Piñeiro Crespo
(2) Joaquín Rodríguez García
(3) Richard Reiss Huyke
(4) Irma Belavel Rosario
(5) Jorge M. Torres Vallés (C.P.A. Expert)

Testifying for defendants were:

(1) Antonio Blanes Carrera
(2) Julio E. Carrera Nicolau
(3) Néstor Irigoyen Matos
(4) Diego Chévere (C.P.A. Expert)

The hearing commenced on May 15, 1990 and continued on May 16, 17, 18, 22, 23, 24, 29 and 30 and June 5, 6 and 7, 1990.

Admitted into evidence was voluminous documentary evidence submitted by both parties, consisting of thirty-five (35) exhibits from plaintiff, numbered consecutively and twenty-two (22) from defendant, marked with the letters 'A' through 'V'.

After listening to the witnesses (5 on behalf of plaintiff and 4 for defendant), and carefully examining the abundant documentary evidence (57 pieces), listening to the explanations of both experts and in light of the credibility which we felt the witnesses merited, the Court makes the following:

FINDINGS OF FACT

1. The domestic profit-seeking corporation Laboratorios Gravi de Puerto Rico, Inc. was formally entered into the Registry of Corporations of the Puerto Rico Department of State under Number 8616 on March 14, 1961 (Plaintiffs' Exhibit 31). According to the uncontroverted testimony of Carlos M. Piñeiro, said company was organized by members of his wife's family, surnamed Cubas, who had another company called Laboratorios Gravi, S. A. in the Republic of Cuba, founded in the late twenties.

2. When first set up in Puerto Rico, the corporation was engaged in manufacturing perfumes and products of personal hygiene, most important among them being the tooth paste ("Gravi" toothpaste), the nail polish of the same brand and other products of personal hygiene. The toothpaste and other Gravi brand products, with the exception of the nail polish, were discontinued and the firm engaged in the manufacture of detergents and cleansers, some chlorine-based. By 1965 to 1966, the corporation began manufacturing chlorine under the trade name of "Purex" and r presenting the Purex products in Puerto Rico. Due to these events, the corporation moved its

operations to Cataño and changed its name to *American Chemical Corporation*.

3. Co-plaintiff Carlos M. Piñeiro, married to Mrs. Zenaida Cubas, was associated with the firm since its founding. He began by driving a truck which distributed toothpaste and later worked in the administrative offices, in various capacities.

4. Mr. Joaquín Rodríguez García was initially designated to the corporate Board of Directors in the mid-sixties as a representative of a subsidiary of Banco Popular de Puerto Rico which had made loans to American Chemical. Part of the financing agreement was that Mr. Rodríguez would be on the Board. As a result, a close business and personal relationship was developed between co-plaintiffs Piñeiro and Rodríguez.

5. Specifically with relation to the American Chemical Corporation, plaintiffs were always related to same as directors, except that Mr. Rodríguez was not a member of the Board, during two intervals in which he served briefly in public service.

6. Around 1977, the American Chemical Corporation went through some hard times. Its president and founder, Dr. Cubas, had passed away, and other members of the Cubas family had developed different interests outside Puerto Rico. The Corporation had accumulated considerable losses over the years and the company that provided financing for working capital was demanding personal guarantees from the owners as a condition for continuing to provide said financing.

7. With this background, co-plaintiffs Piñeiro and Rodríguez decided to take charge of the corporation, first through a management contract. Later on, they acquired from the other shareholders, who were members of the Cubas family, the common and preferred stock owned by the latter at a nominal price, and in addition acquired *an option* to purchase 43,491 additional common shares at $1.00 each, which, were it exercised, would give defendants 80% of the corporate common shares, with which they would have absolute control over same. From that time on, plaintiffs engaged in developing the firm. Mr. Carlos M. Piñeiro assumed the post of President and placed himself at the head of the business, and Mr. Joaquín Rodríguez remained on the Board of Directors.

8. Co-plaintiffs went about the task of improving the Corporation's financial situation and to that end granted personal guarantees to raise new financing, sold certain assets and acquired the representation of new products.

9. As a result of these measures, the corporation stabilized and grew stronger. Gross annual sales increased from $3,196,711.00 in 1978 (Defendants' Exhibit A) to $5,102,234.00 by the close of fiscal year 1982 (Defendants' Exhibit E).

10. In early 1982, American Chemical Corporation had approximately 60 employees. It manufactured chlorine under the brand names of Purex, Dasol and a series of brands called "private" for businesses and supermarkets; it manufactured pine oil and other cleansing products, as well as the Gravi brand fingernail polish. In addition, it distributed Purex brand products, Savoy sausages, Mi-kan dog food, Cobra brand insecticides, Unico brand mops, "Perfection" brand alcohol and others. The company's fiscal year ended on August 31 (Defendants' Exhibits A, E, F and U).

11. The financial statements submitted into evidence by defendant show that American Chemical Corporation had $2,472.00 in profits for the fiscal year ending August 31, 1979; losses of $5,174.00 in 1980 and profits of $30,212.00 in 1981 (Defendants' Exhibits A, E and U). During those years, the accumulated deficit of the operations of prior years was kept stable, fluctuating between $739,966.00 in 1978 and $712,456.00 in 1981. Between 1978 and 1981, sales increased consistently and gross profits from operations increased from $1.19 million at the end of fiscal year 1978, to almost $1.52 million at the end of fiscal year 1981. Net income produced by operations virtually quadrupled during those 4 years.

12. American Chemical Corporation had a problem as a result of the considerable losses accumulated over many years prior to plaintiffs' acquisition of control of the firm. The corporation lacked sufficient working capital, which it would obtain through a very costly financing plan, at interest rates that in 1980 actually exceeded 22%, so that the corporation was paying around $200,000.00 per annum in interest. That meant that in spite of the fact that operations were producing healthy profits, interest was consuming a large part of the profits (testimony of Plaintiffs Piñeiro and Rodríguez and the expert, C.P.A. Jorge Torres Vallés).

13. On the other hand, according to the testimony and analysis of the accounting experts from both parties, American Chemical Corporation had an important asset, the true value of which did not appear on the books or in the financial statements. Several years before, the corporation had acquired a real property located in the Luchetti Industrial Park in Cataño, where it had its operations and main offices. The building belonged to a corporation named Luchetti Industrial Enterprises, Inc. American Chemical acquired the real property through the purchase of 100% of the Luchetti Industrial stock. The building had a real market value, according to a 1979 appraisal, of $715,000.00 (Defendants' Exhibit U, note 5). Nevertheless, according to defendants' expert, CPA Diego Chévere, the building showed up on the corporate books and statements with a net value far below its real value.

14. In order to be able to enjoy the profits produced by company operations, plaintiffs testified that they set about the task of looking for working capital to allow the corporation to free itself from the onerous burden of the interest, and identified two alternatives: to sell the real property for its real market worth to an investor who would want to lease it back to the corporation, or obtain an investor desirous of acquiring a participation in the corporation, with the incentive that the income from manufacturing enjoyed up to a 90% industrial tax exemption. In that search, they met Mr. Antonio Blanes Carrera and the Carrera companies.

15. The F. Carrera & Bro. Inc. and F & J.M. Carrera Inc. corporations and their subsidiaries and affiliates ("Carrera Enterprises") constitute a group of corporations founded by the Carrera family at the turn of this century, well-known in the Puerto Rican business community, engaged in the sales of supplies and liquors, among other businesses. The Chairman of the Board of Directors of F. & J.M. Carrera and the greatest authority figure in Carrera Enterprises was Mr. Antonio Blanes Carrera. According to his own testimony, he had devoted himself for some years to the insurance business, but already by early 1982 he had substantially intensified his participation in the affairs of Carrera Enterprises.

16. Mr. Richard Reiss Huyke, a CPA and highly experienced businessman, had for several years been a consultant to Carrera Enterprises and was intimately acquainted with its businesses and

functioning. According to testimony by Mr. Reiss, which the Court deemed entirely credible, between the months of April and June of 1982, the presidency of the F. & J.M. Carrera corporation was vacant. Mr. Blanes asked Mr. Reiss to devote more time to company matters, until, in June of 1982, Reiss was designated by Mr. Blanes and the Board of Directors to occupy the post of President of F. & J.M. Carrera, Inc. Up to that time, as Mr. Blanes testified, Carrera Enterprises had been engaged in the distribution and sales of products, primarily liquors and supplies, and owned no manufacturing operations.

17. Witnesses Piñeiro, Rodríguez, Reiss and Blanes agreed that in early June of 1982, the first meeting was held between Messrs. Piñeiro and Rodríguez and Mr. Antonio Blanes Carrera. Said meeting, which occurred on a Saturday morning, was later joined by Mr. Richard Reiss. At that first encounter, Mr. Blanes asked a lot of questions which were answered regarding the business and operations of American Chemical. He was shown the entire building, including the warehouse, and manufacturing processes were explained for him. He asked extensively about the products manufactured by the company and those which it sold as a distributor, and he expressed great interest in same. Messrs. Rodríguez and Piñeiro testified that straightaway Carrera Enterprises, through Mr. Blanes, was offered the alternative of acquiring a participation in American Chemical, to which Mr. Blanes responded that he was disposed to acquire "all or nothing". Blanes stated that it was in Carrera Enterprises' best interest to acquire a manufacturing operation that enjoyed tax-exempt status, but he wanted to have absolute control thereof. He suggested to plaintiffs that they make him an offer of sale.

18. Through a letter dated June 18, 1982, addressed to Mr. Antonio Blanes and signed by Mr. Joaquín Rodríguez (Defendants' Exhibit B), the first offer of sale was made. The offer proposed a complicated plan by which Carrera would advance plaintiffs funds in order for the latter to acquire in turn the shares from the rest of the shareholders and then sell them to Carrera, which would likewise acquire the option which plaintiffs held through a down payment and a deferred price, with interest. According to uncontroverted testimony by witnesses Piñeiro, Rodríguez and Reiss, this offer was rejected by

Mr. Blanes, who considered it too complicated. Mr. Antonio Blanes himself admitted that he verbally rejected this first offer.

19. Several conversations and meetings took place between Mr. Blanes and Mr. Piñeiro, culminating in a meeting of principles in July of 1982 at a restaurant in the capital between Blanes, Piñeiro and Rodríguez. According to testimony by Piñeiro and Rodríguez, the parties agreed there to a purchase and sale price for the entirety of American Chemical Corporation of $500,000.00. According to testimony which the court deems entirely credible and which the later actions of the parties corroborated, at said meeting Mr. Blanes said that he had $200,000.00 available for an initial disbursement and that $300,000.00 would have to be paid on a deferred basis. Moreover, he announced to plaintiffs that he had just appointed Mr. Richard Reiss as President of F. & J.M. Carrera, Inc. and that all the necessary details to formalize the transaction should be negotiated and agreed to with Mr. Reiss. Mr. Blanes admitted having instructed and authorized Mr. Reiss to take charge in name of Carrera of everything concerning the transaction of the purchase and sale of American Chemical (Plaintiffs' Exhibit 33).

20. The testimony by Messrs. Reiss and Piñeiro agreed that from that time on, both held a series of meetings and discussions to formalize the agreement by means of which Carrera Enterprises would acquire American Chemical Corporation. The testimony of Mr. Reiss, who represented the purchasing company in said transactions, fully corroborated what was testified to by Mr. Piñeiro in the sense that a price of $500,000.00 was agreed on but that the initial payment could not exceed $200,000.00 per instructions from Mr. Blanes.

21. As a result of said process, at a meeting held in the offices of Mr. Reiss as President of Carrera, the parties reached an agreement. Carrera would acquire the totality of the 16,904 common American Chemical Corporation shares issued and in circulation at a rate of $5.00 per share and 3,932 preferred shares at a rate of $16.00 per share, for a total of $147,416.00 The option which belonged to Messrs. Piñeiro and Rodríguez would be acquired for the sum of $352,584.00, for a total sale price of $500,000.00 after adding in the $147,416.00, the product of the stock sale. Regarding these aspects,

the testimony by Messrs. Piñeiro, Rodríguez and Reiss agreed fully and was mutually corroborative.

22. As Carrera was to disburse only $200,000.00 at the time of closing and the balance had to be deferred, it was agreed to pay first the totality of the price that the holders of the common and preferred shares would receive. The difference up to $200,000.00 ($52,584.00) would be the down payment on the purchase of the option and the remainder would constitute the deferred price to be received by sellers Piñeiro and Rodríguez.

23. Mr. Reiss testified that in relation to the payment of the deferred price, the parties agreed on a mechanism that was mutually beneficial. Two Management Shares would be handed over to Mr. Piñeiro, who would have to stay on as the President of American Chemical Corporation, with a fixed dividend equivalent to 25% of the profits of American Chemical. Since said corporation enjoyed tax-exempt status, it was felt that said dividends could also be exempt from income taxes. In exchange for that, the purchasing firm would not pay the sellers interest on the deferred balance.

24. When the meeting was over, Mr. Reiss testified, he asked Mr. Piñeiro to put the agreements they had reached in writing and to address the letter to Mr. Blanes inasmuch as he (Reiss) was leaving on a trip the next day. This was done, and on August 24, 1982, Mr. Piñeiro sent Mr. Antonio Blanes three letters (Plaintiffs' Exhibits 1, 2 and 3). The first one is a cover letter in which Mr. Piñeiro tells Mr. Blanes:

> "Yesterday, Monday, I met with Richard (Reiss) to finalize details on the sale of ACC to F & J. M. Carrera, Inc. *After we reached an agreement,* he asked me to prepare a *draft** (sic) of a letter of agreement and to send it to you directly, since he was leaving Puerto Rico on a business trip". (Emphasis supplied) (Plaintiffs' Exhibit 1).

25. Plaintiffs' Exhibits 2 and 3 constitute the two "letters of agreement", addressed to Mr. Blanes, Chairman of the Board of Directors of F. & J.M. Carrera, Inc. In the first one, the sale agreement

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* *The English "draft" is used here. --Translator*

of all the common and preferred stock of American Chemical Corporation to F. & J. M. Carrera, Inc. is confirmed, for the total purchase price of $147,412.00.[a] The second letter (Plaintiffs' Exhibit 3) confirms the agreement to sell *the option* owned by Messrs. Piñeiro and Rodríguez for the purchase of 43,491 common American Chemical Corporation shares through a payment mechanism that comes to the sum of $352,584.00 which, added to the purchase and sale price of the common and preferred stock, gave the total of the agreed-to price of $500,000.00.

26. As Carrera only wished to disburse $200,000.00 at the time of closing and defer the payment of $300,000.00, the parties agreed--and so attested Piñeiro in the document of August 24, 1982--that, regarding the option, $52,584.00 would be paid at the time of closing the sale transaction and the rest through the mechanism which he agreed to with Mr. Reiss of the dividends of 25% of American Chemical Corporation's profits over 5 years up to a maximum of $300,000.00. Messrs. Piñeiro and Rodríguez testified that a 5-year term was agreed to because the parties considered it sufficiently comfortable to satisfy the payment of the debt based on the projected profits that American Chemical Corporation would have.

27. Mr. Antonio Blanes, in his capacity as Chairman of the Board of Directors of F. & J.M. Carrera, Inc. agreed to and subscribed the two letters which he was sent by Mr. Piñeiro (Plaintiffs' Exhibits 2 and 3) dated August 24, 1982, and in his own handwriting added a footnote to each document which reads: "Subject to approval by our Board of Directors". In his testimony, Mr. Blanes stated that the Board of Directors subsequently ratified said contracts. This statement coincides with what was testified to by Mr. Reiss, who was also a member of said Board at that time.

28. After the signing of the contracts of August 24, 1982, a process began whereby the purchasing firm carried out a far-reaching and exhaustive investigation of all the records and of all of functioning of

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a The correct total is $147,416.00; to wit: 3,931 preferred shares x $16.00 = $67,896.00 plus 16,904 common shares x $5.00 = $84,520.00. This is a typographical error. See Defendants' Exhibit 'T'.

the corporation that was to be acquired. Said process was commended by Mr. Reiss to Mr. Néstor Irigoyen, who at that time was the F. & J.M. Carrera Controller and Vice-President of Finance.

29. Mrs. Irma Belaval, who in August of 1982 was working in the accounting department of American Chemical and for several months had been performing *de facto* the functions of the controller, testified that Mr. Piñeiro called her and other members of American Chemical's management and introduced them to Mr. Néstor Irigoyen. Mr. Piñeiro gave the officers at American Chemical instructions for Mr. Irigoyen to be given all the information, access to all the books, to all the accounts and, to all the documentation he requested. This was done, as corroborated by Mr. Irigoyen himself, who admitted that around late August and early September of 1982, he visited American Chemical Corporation's office many times, almost every day for a space of two weeks, visits which went from mid-morning until after office hours and occasionally even at night.

30. The uncontroverted evidence showed that the purchaser, through Mr. Irigoyen, had ample access and in effect examined all the information relative to the functioning and finances of the company it was acquiring. Specifically, Mr. Irigoyen examined books of account, familiarized himself with the accounting process and with the system used by American Chemical, examined accounts payable, payrolls, correspondence with suppliers and customers, interviewed employees, obtained copies of documents and, in general, had access to all the information he asked for. Mrs. Belavel testified that from that time on, Mr. Irigoyen began to treat her "as if her were her boss" and that, in effect, she understood that she was obliged to show him and disclose to him all the information he asked for.

31. Mr. Reiss described the procedure by means of which the internal affairs and the finances of American Chemical were examined as an exercise in "*due diligence*"* and testified that at the end of several weeks, Mr. Irigoyen informed him that he was satisfied, that he had all the financial information he needed and that he had made some projections based on the information obtained,

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* *English is used here. --Translator*

which corroborated Carrera's expectations of American Chemical's profits (Plaintiffs' Exhibits 34(a) and (b)).

32. According to testimony by Mr. Reiss, corroborated by the admissions of Mr. Blanes, until that moment the Carreras companies had no operation that enjoyed industrial tax-exempt status. Upon acquiring American Chemical, it was proposed to absorb into the F & J.M. Carrera, Inc. corporation, the bulk of the management expenses and to take those measures that would allow them to maximize the tax-exempt earnings of American Chemical Corporation's operations. Specifically, the parties analyzed American Chemical's working capital situation and determined that a large part of the earnings produced by the operations went into paying interest to an entity that was providing financing at an elevated cost. Upon transferring that cost to another of the affiliated concerns, American Chemical Corporation's tax-exempt earnings would increase significantly.

33. Mr. Néstor Irigoyen, during the examination which he performed of American Chemical's finances and affairs, prepared some income and expense projections for said company by assuming that the cost in interest for the working capital facilitated would not be absorbed by American Chemical and *would* be by F. & J.M. Carrera (Plaintiffs' Exhibit 34 (a) and (b)). Likewise, he projected that certain administrative costs would be charged to F and J.M. Carrera's operations. Based on this plan, Mr. Irigoyen projected that American Chemical would have net profits for the following year of some $400,000.00 With that expectation, by paying Mr. Piñeiro the 25% of said profits annually, the unpaid balance could be paid off in three years.

34. The plan agreed upon offered co-plaintiff Piñeiro the chance to receive the deferred balance in the form of dividends which could be tax-exempt and in exchange for that potential benefit, the sellers would agree that the deferred price would not be subject to interest payments, as had been requested originally (Defendants' Exhibit B). Witness Richard Reiss described the agreement as one which offered benefits both for the purchaser and the seller. Mr. Reiss (C.P.A.) said that he received the task of implementing the purchase and sale agreement and that Mr. Blanes had told him that he agreed to acquire American Chemical for $500,000.00 and that no more than

$200,000.00 would be paid at the closing of the transaction. He told Mr. Reiss: "my intention was to comply with the commitment and I thought that it could be paid in two (2) or (3) years".

35. Mr. Piñeiro testified that although a 5-year term was agreed to in which to pay the deferred part of the price, the expectations of both parties were that in all probability the $300,000.00 would be fully paid before said term ended. What is more, he said: "...nothing was said about what would happen if there were no profits. It was always planned for there to be profits."

36. Once the parties had come to an agreement as to the terms of the contract and after the purchasing company carried out its exhaustive investigation *("due diligence")*, the parties were ready to formalize the transaction.

37. On October 13, 1982, the sellers were summoned to the offices of the Law Firm Ortiz Murias & Saldaña, attorneys for Carrera Enterprises. Attorney Jacobo Ortiz Murias was requested by Carrera to prepare the closing documents. To that effect, Attorney Ortiz Murias drew up two contract drafts, one for the purchase and sale of the common and preferred stock issued and in circulation, and the other one for the purchase and sale of the option.

38. According to the uncontroverted testimony by witnesses Reiss, Piñeiro and Rodríguez, Messrs. Joaquín Rodríguez and Carlos M. Piñeiro showed up at the Ortiz Murias & Saldaña law offices, the latter acting also as power of attorney for a group of owners of common and preferred stock. Appearing in representation of the purchaser was Mr. Richard Reiss, President of F. & J. M. Carrera, Inc.

39. With respect to the purchase and sale of the common and preferred stock, the same was carried out through the execution of a contract to such end (Defendants' Exhibit T) and the respective payments were made, totalling the agreed-upon price of $147,416.00.

40. With respect to the option to purchase additional common stock which Messrs. Piñeiro and Rodríguez were to sell to Carrera, the three witness who were present at the meeting agreed that Attorney Ortiz Murias warned them of the possible difficulties with the manner in which the contract was written, in light of the parties' manifest intention that the payment of the option could be tax-exempt

for the sellers. At that time, the parties chose to discard the text of the contract they had before them.

41. The three witnesses agreed as to the fact that, since the intention of the parties was clear among them and there was mutual trust, they proceeded to make the initial payment in exchange for the execution of two provisional documents which Carrera's attorney hurriedly dictated to his secretary. The first one (Plaintiffs' Exhibit 4) is written in the form of a receipt, bears the date October 13, 1982 and is subscribed by plaintiffs Joaquín Rodríguez and Carlos M. Piñeiro. In the same it is established that the option which is the subject of this lawsuit was sold, assigned and conveyed to F. Carrera & Bro., Inc. "... for the sum of $1.00 and other valuable considerations...".

42. The second document (Plaintiffs' Exhibit 5) is written in the form of a letter, bears the date of October 13, 1982, is addressed to co-plaintiff Carlos M. Piñeiro and is subscribed by Mr. Richard Reiss in name of American Chemical Corporation, acquired at that moment by F. Carrera & Bro., Inc. Simultaneously, F. & J.M. Carrera, Inc. handed plaintiffs Rodríguez and Piñeiro each a check (Plaintiffs' Exhibits 6(a) and (b)), in the sum of $26,292.00 each, as an "advance purchase option". Both were signed by J. M. Carrera and Orlando Ronda. According to uncontroverted testimony by Messrs. Rodríguez, Piñeiro and Reiss, the parties agreed that Carrera's attorneys would later draw up a formal contract to substitute for the provisional documents.

43. Following the acquisition of American Chemical Corporation, the purchasing company made a series of accounting, administrative and operational changes therein. In the accounting area, defendants' expert explained that an operation was conducted known as *"step up"** consisting of the revaluation on the books of some assets of the acquired company whose market value is greater than what is reflected on the books and in the statements of account. In this case it was the real property owned by American Chemical. CPA Diego Chévere explained that as a result of that *"step up"*, American Chemical Corporation's assets and those of its subsidiary Luchetti

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* *English is used here. --Translator*

Industrial Enterprises, Inc. were "emptied" into a "new entity" by expressing the values of the assets on the books of said new entity based on their real market value. This meant an increase in the value of American Chemical's assets of $402,101.00 as a result of that operation. (Defendants' Exhibit I).

44. Mr. Irigoyen testified that the closing of the books for American Chemical Corporation's fiscal year was done on August 31 of every year. American Chemical's external auditor, Jorge M. Azize, submitted a first draft of a general balance sheet for the year ending on August 31, 1982 (Defendants' Exhibit F). Mr. Iriguyen went on to testify that he later paid a visit to Mr. Azize's offices and in name of the new owners requested the latter to make a series of changes and adjustments to the financial statement of August 31, 1982, for the purpose of "cleaning" said statement to a date prior to the acquisition. The effect of such "cleaning" is that the final statement for that fiscal year (Defendants' Exhibit E), showed some losses for said year which were not reflected in the first draft (Defendants' Exhibit F) which had been drawn up previously. Mr. Irigoyen admitted that said adjustments were made at the request and in the best interests of Carrera.

45. To those same ends, American Chemical's fiscal year was changed so that it coincided with that of Carrera Enterprises, which closed its books on March 31 of every year. The effect is that for accounting purposes an irregular "fiscal year" was established, which lasted from November 5, 1982 to March 31, 1983. Several witnesses referred to such five-month period as the "short year". Defendant produced neither a statement nor any document whatsoever to show the results of American Chemical operations between August 31 and November 5, 1982.

46. As for the so-called "short year", the financial statement of F. Carrera & Bro. Inc. and affiliated companies and subsidiaries, audited by the well-known firm of public accountants Touch, Ross & Co., shows a new firm called "American Chemical *Inc.*" with a totally different capital structure (the accumulated deficit of prior years had been eliminated) from the corporation which plaintiffs sold, and an operating loss for said "short" fiscal year of $33,738.00. Witness Irigoyen and Reiss testified that all these changes were made by decision of the management of Carrera Enterprises, for its own

convenience, and Mr. Carlos M. Piñeiro was neither involved nor did he participate at all therein.

47. The uncontroverted evidence shows that as of the acquisition, Carrera transferred to its main offices on Chardón Street in Hato Rey the operations of American Chemical related to finance and accounting. Between the months of October of 1982 and March of 1983, Mr. Piñeiro stayed on in Cataño, in the capacity of President of American Chemical, in charge of the manufacturing operations.

48. Upon transferring American Chemical's accounting and finance operations to Carrera's main offices, said firm also transferred Mrs. Irma Belaval, who went on to work under the direct supervision of Carrera's controller.

49. The uncontroverted evidence showed that Carrera never took the steps for its attorney to draw up the purchase and sale agreement which is the subject of this lawsuit. Mr. Piñeiro testified that on repeated occasions he first requested Mr. Reiss and later Mr. Blanes, to deliver him his contract and the certificates of management shares which reflected that he would be paid the dividend agreed upon. Carrera never produced either the contract or the share certificates, per admissions of Mr. Blanes himself (See also Plaintiffs' Exhibit 26, p. 2, answer 16).

50. Another important change in the financial management of American Chemical had to do with the financing which it was getting from a firm named Walter E. Heller & Company for working capital. According to the agreement between the parties, corroborated by the projections made by Mr. Irigoyen, upon acquiring American Chemical, Cerrera Enterprises would was to contribute said working capital, which would eliminate for American Chemical the operating cost of paying interest, substantially increasing their profits. In effect, on the day after F. Carrera & Bro. Inc. acquired American Chemical Corp., F. & J.M. Carrera, Inc. paid off American Chemical's debt with Walter E. Heller & Co. in the sum of $856,901.61 (Defendants' Exhibit L).

51. Mrs. Belaval testified that while Mr. Richard Reiss was the President of F. & J.M. Carrera, Inc. and specifically until July of 1984, no interest charges were made between affiliated corporations with relation to the funds which Carrera contributed as working capital to American Chemical. The documentary evidence corroborated that,

in effect, said charges were not made, in harmony with what was agreed to among the parties according to the testimony by Messrs. Piñeiro, Rodríguez and Reiss and the projection made by Mr. Irigoyen. It appears from the testimony of Mr. Néstor Irigoyen that he made projections of the statements of income and expenses for the products manufactured and the products represented and "in both, profits are projected". Mr. Irigoyen asserted that the profits "were significant because if not, it would not have been purchased." Mr. Irigoyen's projections demonstrate that they are reliable, since in redirect he testified that he projected net sales of $1,900,000.00 for March of 1984 and actual sales came to $2,662,000.00. This is in spite of the fact that several lines of products which American Chemical had previously sold, were transferred to F. & J.M. Carrera, Inc.

52. In the operational phase Carrera also made a series of changes in relation to American chemical. Apart from transferring the administrative, financial and accounting functions to the main office, a series of products that American Chemical distributed were transferred over to F. & J.M. Carrera, Inc. to be distributed by the latter, who thereafter earned the profits from said distribution. As a result, a number of American Chemical salespersons were dismissed and the others went on to form a part of the F. & J.M. Carrera, Inc. sales group.

53. In like manner, the products that American Chemical manufactured went on to be distributed by F. & J.M. Carrera, Inc., who *[sic]* distributed them on à sales commission basis of eight percent (8%) fixed by the Carrera management. (Plaintiffs' Exhibit 11). Mr. Blanes testified that the decision for Carrera to distribute the products manufactured by American Chemical in exchange for a commission was made with the intention of maximizing American Chemical's profits and absorbing the greater operational costs in F. & J.M. Carrera, Inc., in view of the fact that the former enjoyed industrial tax-exempt status.

54. The first complete fiscal year of American Chemical operations after the aforesaid administrative, financial and operational changes were effectuated, commenced on April 1, 1983 and ended on March 31, 1984 (Defendants' Exhibit D).

55. During said year there also occurred another important administrative change. At the time of the purchase and sale, the

parties had agreed that Mr. Carlos M. Piñeiro should stay on as President of American Chemical Corporation. Nevertheless, in early 1983 Mr. Reiss required Mr. Piñeiro to work a half-day at Carrera and a half-day at American Chemical and assigned him "special projects" in the Carrera main offices. In the summer of 1983, Messrs. Blanes and Reiss removed Mr. Piñeiro from his charge as President of American Chemical and transferred him to Carrera Enterprises' main offices in Hato Rey, designating him Executive Vice-President of F. & J.M. Carrera, Inc. Mr. Luis González Bush was designated as the new President of American Chemical. As of that moment, Mr. Piñeiro worked in Hato Rey, in his new capacity as Executive Vice-President of F. & J.M. Carrera, Inc., with Mr. Richard Reiss as the President of the corporation and Mr. Antonio Blanes as Chairman of the Board of Directors.

56. According to the combined financial statements of F. Carrera & Bro., Inc. and affiliated companies, in the fiscal year ending on March 31, 1984, "American Chemical, *Inc.*" had net profits of $175,269.00. Mrs. Irma Belaval testified that during the summer of that year, the external auditors of Carrera Enterprises recommended to Mr. Blanes to dismiss the then Controller, Mr. Walter Renaud. Also at the recommenda-tion of the auditors, who interviewed her, Mrs. Belaval was designated during the summer of 1984 as the Controller of F. & J.M. Carrera, Inc. She testified, moreover, that at that time Mr. Blanes was already running the company on a day-to-day basis. Mrs. Belaval described, credibly in the opinion of the court, the profits of $175,269.00 through March 31, 1984 as "good profits". She likewise said that "no profits were acknowledged for Carlos Piñeiro". Mrs. Belaval gave assurances that the tax return for the fiscal year ending on March of 1984 which appears signed by her and José M. Carrera (Plaintiffs' Exhibit 9) was prepared by the auditors, Touche Ross & Co. and issued to her. In comparing "their numbers with mine, I observed that the net income didn't balance with the net income on the already audited books" and added: "on the books there was more income than on the return". The explanation for the discrepancy ($175,269.00 in profits on the books vs. $135,508.00 on the return) was that $39,761.00 appears on the return as "expenses incurred and not paid". Supposedly that was the dividend which the Touch-Ross

auditing firm computed as an account payable to Carlos M. Piñeiro for the aforesaid period.

57. Mrs. Belaval stated that on instructions from the auditors she made the respective adjustment on the books (Plaintiffs' Exhibit 10) but NOT in the financial statement because she hadn't prepared same. She said that Mr. Willie Rodríguez (of Touche Ross) told her that Mr. Blanes DID NOT want that to show up on the books, that that was for the tax return, NOT for the books. Under cross-examination she also testified: "the decisions were made by Mr. Blanes in spite of the fact that I was the Controller" and to questions by the Court she said: "Management says whatever it wants, I want it to work in our favor... I can make of it whatever I want". The $39,761.00 were never paid to Mr. Piñeiro.

58. After the conclusion of the fiscal year on March 31, 1984, Mr. Piñeiro began demanding that the Carrera management pay him 25% of American Chemical's profits pursuant to the payment mechanism which had been agreed to in relation to the deferred portion of the option sale. On July 5, 1984, he was given an American Chemical Corporation check in the sum of $10,000.00 as an "advance payment" (Plaintiffs' Exhibit 7).

59. Following the resignation of Mr. Reiss as President of F. & J.M. Carrera, Inc. in July of 1984, Mr. Blanes directly assumed the presidency thereof and on July 31 issued a memorandum to Mrs. Irma Belaval (Plaintiffs' Exhibit 11) in which he informed her that the subsidiaries "American Chemical" and "Recaíto" were sold by F. & J.M. Carrera, Inc. to Antonio Blanes Carrera, Sira Blanes de Ortiz, Inversiones Blanes, Inc. (Blanes Investments, Inc.) and the Carrera Rolán family. In said memorandum Mrs. Belaval was instructed that "effective July 1, 1984, you have to make the monthly interest charge from the affiliated companies". No notice of this purchase and sale was given to Mr. Piñeiro, who testified that he learned of it later on by chance when, in his presence, Mr. Blanes' father showed up to make a payment for the portion that Inversiones Blanes, Inc. was acquiring. He told Mr. Piñeiro that he DID NOT participate in that sale and that when he asked Mr. Richard Reiss for an explanation, the latter told him that it was a decision of the shareholders, "that I should contact Blanes". When Mr. Piñeiro said to Blanes: "I'm seeing

corporate changes, I see that it's being sold, that payments are being made", Mr. Blanes replied: "You'll be paid in full."

60. One of the outstanding elements of this incident is that starting in July of 1984, contrary to what had been agreed to among the parties, on American Chemicals books of account charges started being made for interest payable to F. & J.M. Carrera, Inc., which had the immediate effect of increasing costs and therefore reducing American Chemical's profits. It is important to point out in this sense the testimony of Mr. Richard Reiss, a Certified Public Accountant, who first acted as a consultant and then as President of Carrera, who stated, credibly in the opinion of the court, the following: "A building and equipment in operation were being acquired for $500,000.00 and that was a good deal. It was never planned for Carrera to charge interest."

61. Mr. Piñeiro testified that he felt completely relegated to the fringes by Mr. Blanes, that he wasn't informed of the administrative decisions that were made and that his numerous requests to be given the option sale contract, the management shares and to be paid the portion that belonged to him from American Chemical's earnings, were left unanswered. He testified that Mr. Blanes made himself ever more inaccessible. In September of 1984, unable to bear the situation any longer, he spoke with Mr. Blanes and presented his resignation as Vice-President of Carrera. Mr. Piñeiro testified that he was not dismissed: "they made life impossible for me." Mr. Blanes asked him to stay on until the last day in September and offered to meet with him to discuss everything concerning the execution of the payment that belonged to him. Nevertheless, that wasn't the way it happened. Mr. Piñeiro testified that thereafter it was impossible for him to again see, meet with or speak on the telephone to Mr. Blanes. He left him numerous messages at his office and the latter was always inaccessible. After his departure, Mr. Piñeiro, on October 16, 1984, sent a letter to Mr. Blanes wherein he indicated that "a reasonable time has already gone by for you to pay me my participation and I absolute must know your final position on this matter; to avoid my having to reach the inescapable conclusion that you do not wish to fulfill your commitment." (Plaintiffs' Exhibit 8).

62. Both the documentary evidence and the admissions by defendants' witnesses themselves, show an utter breach on their part of the agreements which they had reached with the sellers. Carrera

Enterprises never took the measures nor did they make the arrangements for an agreement to be drawn up of the purchase and sale of the option to take the place of the two provisional documents executed on October 13, 1982, nor did they issue the two management shares that they had offered plaintiffs. Moreover, in relation to the mechanism of payment of the deferred p ce based on paying co-plaintiff Piñeiro 25% of American Chemical's profits, defendants showed a pattern of behavior and took a series of measures which made it impossible for said agreement to be complied with. For example, the juridical person, "American Chemical Corporation" which was the firm sold to the purchasers, according to the letter of June 22, 1983 from Mr. Néstor Irigoyen to the Hon. Secretary of the Treasury, "ceased operations and commenced its process of liquidation." (Plaintiffs' Exhibit 29). According to said letter and the corporate personal property tax return for the fiscal year 1983-84, already as of December 31, 1982, American Chemical *Corp.*'s books of account reflected no balance in their accounts.

63. Carrera Enterprises took all of American Chemical Corporation's assets and those of its subsidiary Luchetti Industrial Enterprises, Inc. and "emptied them" into a new entity which they called American Chemical *Inc.* which was not registered with the Puerto Rico Department of State, as shown by a copy of its certificate of incorporation, until November 12, *1986* (Defendants' Exhibit P; see also Plaintiffs' Exhibit 23).

64. On the appropriate corporate tax returns for the years ending March 31 of 1983, 1984, 1985, 1986 and 1987, it is established that said corporation was incorporated on November 5, 1982 in San Juan, Puerto Rico and that its Registration Number with the Department of State is No. 52,903 (Plaintiffs' Exhibits 9, 12, 13, 14 and 15). Nevertheless, the evidence showed that the aforesaid number, according to a copy of a certificate issued by the Puerto Rico Department of State, pertains to a corporation named "Rojomilú Corp." whose certificate of incorporation shows that it had borne no relationship at all to defendants in this case and that in addition, it was registered on *October 8*, 1982 (Plaintiffs' Exhibit 32).

65. According to a financial balance sheet audited by the Touch Ross firm for "American Chemical *Corp.*" for the fiscal year ending on March 31, 1985, it is indicated that for said period the Carrera

corporations charged American Chemical's operations $89,000.00 in interest and $50,000.00 in "*management fees*"* (Plaintiffs' Exhibit 30, Defendants' Exhibit Q). Nevertheless, the auditors themselves in the report pertaining to the fiscal years ending on March 31, 1985 and 1986, record for 1985 the same figure in interest paid by American Chemical to Carrera Enterprises, but the following entry is described as "*management and other fees*"* and is increased to $93,000.00. In that same report (Plaintiffs' Exhibit 16), for 1986 American Chemical was charged $101,000.00 in interest and $99,000.00 for "*management and other fees*".* Said charges are clearly contrary to what was agreed to between the parties at the time the purchase and sale was conducted.

66. As for the charging of the "*other fees*"* this is a matter of some charges for rent attributed to warehousing ($52,450.00) and fifty percent (50%) of the wages of *don* Evaristo Freiría ($16,530.00), an officer of another affiliated firm with Carrera's management decided to assign certain functions at American Chemical and likewise to charge to said corporation half of his compensation. Witness Julio Carrera admitted that all these decisions were taken unilaterally by Carrera's management, following Mr. Piñeiro's departure. Messrs. Blanes and Carrera admitted that these charges were levied by Carrera's management at the latter's discretion and without Mr. Piñeiro participating in any fashion in said process.

67. The Court dismisses defendant's theory that the payment of the deferred price of $300,000.00 was conditioned on Mr. Piñeiro's staying on as President of American Chemical Corporation. Even if he had been *[sic]*, Carrera made the fulfillment of such condition impossible. In the first place, the juridical person "American Chemical *Corp.*" ceased to exist by unilateral decision of the purchasing company and its assets and operations were likewise reorganized at the latter's convenience. The new entity, "American Chemical, *Inc.*" was then sold to certain members of the family in July of 1984, so that it ceased to be a subsidiary of F. Carrera and Bro. Inc. Beyond that, since the summer of 1983, management at Carrera had relieved Mr. Piñeiro of the presidency of American

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* *English is used here. --Translator*

Chemical and had transferred him from Cataño to Hato Rey, to work with F. & J.M. Carrera, Inc.

68. The Court concludes as a mixed issue of fact and law, that the F. Carrera & Bro., Inc. and F. & J.M. Carrera, Inc. corporations and their subsidiaries and affiliates functioning jointly and through their duly authorized directors and officers, bound themselves through a purchase and sale agreement with plaintiffs to acquire from the latter an option for the purchase of American Chemical Corporation common stock, as part of a greater transaction to acquire the entirety of said firm. A total purchase and sale price of $500,000.00 was agreed upon. An initial payment of $200,000.00 was agreed to, through a plan by which sellers would receive tax-exempt dividends. Co-defendants F. Carrera & Bro., Inc.; F. & J.M. Carrera, Inc.; American Chemical *Corp.* and/or American Chemical, *Inc.*, through management and accounting decisions and actions, utterly distorted the method of payment upon which the parties had agreed, for the deliberate purpose of evading compliance with said obligation. Since the mechanism for payment of the deferred price was distorted by the deliberate actions of defendants, the totality of the deferred price is, of course, demandable.

69. Defendants only paid plaintiffs the sum of $10,000.00 on account in July of 1984, so that they still severally owe plaintiffs the principal sum of Two Hundred Ninety Thousand Dollars ($290,000.00).

70. The Court finds that defendants acted recklessly in their handling of the lawsuit.

In light of the above findings of facts, the Court makes the following:.

CONCLUSIONS OF LAW

1. Any obligation consists of giving, doing or not doing some thing. Civil Code, 1930, Art. 1041, 31 LPRA Sec. 2991. In this case defendants breached their obligation to pay the sellers the deferred price, and additionally, they took a series of measures which made it impossible to formalize the mechanism of payment agreed upon.

2. Obligations arising from contracts have the force of law among the contracting parties, and they must be complied with pursuant thereto. Civil Code, 1930, Art. 1044, 31 LPRA Sec. 2994.

3. Those who are bound to deliver or do some thing are in default from the moment the creditor demands of them, in or out of court, the fulfillment of their obligation...Civil Code, 1930, Art. 1053, 31 LPRA 3017. Since at least October 16, 1984, the date on which co-plaintiff Piñeiro demanded by letter payment from Mr. Blanes, defendants were in default.

4. Those who, in the fulfillment of their obligations, commit fraud, negligence or default, and those who in any way infringe on the former, are subject to indemnity of the damages caused. Civil Code 1930, Art. 1054, 31 LPRA 3018. If the obligation consists of the payment of a sum of money and the debtor is in default, indemnity of damages, there being no agreement to the contrary, shall consist of the payment of the interest agreed upon, and absent a covenant, of *legal interest*. Civil Code 1930, Art. 1061, 31 LPRA 3025. In this case the outstanding sum of $290,000.00 shall accrue legal interest as of October 16, 1984.

5. In relation to defendant's allegation that for payment of the deferred price there existed the condition that Mr. Piñeiro stay on as President of American Chemical Corporation for 5 years, the codes states that "The condition shall be deemed fulfilled when the debtor voluntarily prevents its fulfillment." Civil Code, Art. 1072, 31 LPRA 3047. In this case defendants, with their voluntary and unilateral actions, dismissed Mr. Piñeiro from such charge and transferred him to another position at F. & J.M. Carrera, Inc. Later, they sold "American Chemical" to, among others, a group of family members, so that American Chemical ceased to be an F. Carrera & Bro., Inc. subsidiary.

6. The validity and fulfillment of contracts cannot be left to the discretion of one of the contracting parties. Civil Code, Art. 1208, 31 LPRA 3373. Here defendants sought to have the mechanism for the payment of the deferred price depend on earnings whose total sum could be affected by defendants themselves at their discretion through unilateral accounting and administrative operations, as, in effect, happened.

7. If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, their clauses shall be abided by in their literal sense. If the words appear to be contrary to the obvious intention of the contracting parties, *the latter shall prevail over the former* (emphasis supplied). Civil Code 1930, Art. 1233, 31 LPRA 3471. In this case we have no doubt whatsoever that the clear intention of the parties when the agreement to which the documents of August 23, 1982 make reference was created forged, was for the sellers to be paid a deferred price of $300,000.00.

In light of the above findings of facts and conclusions of law, the Court enters the following:

JUDGMENT

The Complaint is GRANTED and codefendants F. Carrera & Bro., Inc.; F. & J.M. Carrera, Inc.; American Chemical Corp. and/or American Chemical, Inc. are ordered to pay *in solidum* the principal sum of $290,000.00 plus interest as of October 16, 1984 until it is fully and totally paid at the rate of 11% per annum, pursuant to the certification issued by the Office of the Commissioner for Financial Institutions on June 30, 1990, Section 4 of Regulation 78-1, plus litigation costs. Defendants, for having acted recklessly, are further ordered to pay $20,000.00 in attorney fees. The Counterclaim as to John Doe and Richard Roe is DISMISSED.

Given in San Juan, Puerto Rico, this 10th day of October, 1990.

BE IT RECORDED AND NOTIFIED.

(signed illegibly)
EVARISTO M. ORENGO, JR.
Superior Court Judge

I Certify:

Paulita Santiago
Clerk of the Court
(signed illegibly)
By: Dep. Clerk

[Note: On every page of this document except page 35, the initials of Judge Orengo, Jr. appear along the bottom margin. --Translator]

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts

(Translation)

IN THE PUERTO RICO SUPERIOR COURT
SAN JUAN PART

CARLOS M. PIÑERO, ET AL.	*	CIVIL NO.
Plaintiff,	*	KAC85-1797 (905)
vs.	*	IN RE: COLLECTION OF MONEY
AMERICAN CHEMICAL CORP., ET AL.	*	
	*	
Defendants.	*	

MOTION ASSIGNING FUNDS

TO THE HONORABLE COURT:

Come now captioned defendants through the undersigned legal representation and very respectfully state and pray:

1. Yesterday, July 2, 1991, this Honorable Court issued an order granting a motion presented by plaintiffs that is entitled Motion Requesting Order that the Amount of the Bond Be Made Effective, without first giving defendants nor their guarantor time to answer said motion.

Even worse, the party appearing herein has not yet had the benefit of receiving a copy of said motion requesting order that the amount of the bond be made effective. Namely, that said motion was determined ex parte.

2. In the second and last paragraph of the order issued yesterday, it provides that same is issued "without hindering the right of plaintiff-creditor by a judgement claiming the total payment of the debt from defendants..." It is evident that the message throughout said paragraph is that forthcoming there will be another ex parte order issued, authorizing the embargo of goods belonging to the defendants appearing herein.

3. In order to avoid the harm that plaintiffs clearly want to create for defendants through said embargoes, said party has opted to deposit the amount of $529,346.20 with this Honorable Court, through official check number 765817, issued by Banco Santander Puerto Rico, to the order of the Secretary of this Honorable Court. Said amount includes the principal of the judgement, the interest accrued on same from October 16, 1984 until today, July 3, 1991, the costs approved by this Honorable Court and the allowable attorneys' fees.

4. The party appearing herein, as this Honorable Court was previously notified, has requested the Honorable Supreme Court of Puerto Rico to halt the effect of the judgement in order to allow defendants to appeal before the Supreme Court of the United States by means of the Certiorari appeal. See Urgent Motion filed June 25, 1991. Notwithstanding said notice, this Honorable Court issued an order yesterday requiring payment of the judgement.

In light of the aforementioned, and given the fact that the deposit made through the present is with the intention of avoiding the harm that plaintiffs wish to cause defendants, the party appearing herein respectfully requests this Honorable Court not to permit the withdrawal of deposited funds until the Honorable Supreme Court of Puerto Rico expresses itself regarding the motion filed before said higher court on June 25, 1991.

WHEREFORE, we very respectfully request this Honorable Court to accept the deposit in the amount of $529,346.20 made through the present motion; to set aside the ex parte order issued yesterday, July 2, 1991, addressed to United Surety & Indemnity Company; and set aside any other ex parte order that may have been issued authorizing plaintiffs to embargo defendants' goods.

RESPECTFULLY SUBMITTED.

I CERTIFY: I have sent a copy of the present motion by hand to Atty. A.J. Bennazar Zequeira at his office located on the 17th floor, Office 1700 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

In San Juan, Puerto Rico, on July 3, 1991.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565

By: (Signed. Illegible)
HECTOR SALDAÑA
EGOZCUE
Bar Member No. 6959

Santander Puerto Rico Official Check No. 765817
Branch: 008 Hato Rey Fomento Date: 07/03/91
$***529,346.20***

PAY SUM OF 529346 (illeg.) 20 (illeg.) DOLLARS

(Signed. Illeg.)
(Signed. Illeg.)

TO THE ORDER OF: SECRETARY OF THE SUPERIOR
COURT OF PR, SAN JUAN PART
IN RE: JUDGEMENT DEPOSIT
PRONOUNCED IN THE CIVIL CASE NO. 85-1797 (905)

765817-021502341-900-99038

NO. 7658172 DATE 7/03/91

BENEFICIARY SECRETARY OF THE SUPERIOR COURT
OF PR, SAN JUAN PART
JULIO E. CARRERA FOR F & J
CARRERAS SUST CK 008042483
AMOUNT $***529,346.20***

(Correspondence stamp dated July 3, 1991 affixed.)

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation
prepared by:
Daniel Tomlinson 8/28/91
Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

IN THE PUERTO RICO SUPERIOR COURT
SAN JUAN PART

CARLOS M. PIÑEIRO ET AL	*	CIVIL NO. 85-1797
Plaintiff	*	(905)
v.		IN RE: COLLECTION OF MONEY
AMERICAN CHEMICAL CORP. ET AL	*	
Defendants	*	
----------	*	

URGENT MOTION

TO THE HONORABLE COURT:

Comes now the above-captioned defendant through the undersigned counsel and very respectfully states, alleges and prays:

1. In a reconsideration filed with the Supreme Court as well as in the initial motion praying for a stay of Mandate, it was reported that in view of your refusal to issue the above-captioned writ of review, the appearing party shall go before the United States Supreme Court in a petition of Certiorari.

2. In addition, the appearing party has at all times informed this Honorable Court of its intention to file a petition of Certiorari with the United States Supreme Court.

3. To that effect, we pray this Honorable Court to order it placed in the record of the above-captioned case that if the withdrawal of the amount awarded by the judgment of which review is sought is authorized, which [award] is deposited with the clerk's office of this Honorable Court, said payment would be an involuntary one and would be subject to the results of the Certiorari which the appearing party will soon file with the United States Supreme Court and proceedings thereafter.

WHEREFORE, the appearing party very respectfully prays this Honorable Court to order it placed in the record that if the withdrawal of the award deposited with this Honorable Court is authorized, said

payment is an involuntary one and shall be subject to the results of the petition of Certiorari which defendant has announced it shall file shortly.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16th day of July, 1991.

I CERTIFY: That I have mailed a true and correct copy of the instant motion to Atty. A.J. Bennazar Zequeira at his office located on the 17th Floor, Suite 1700 of the Banco Popular Center Building, Hato Rey, Puerto Rico.

SALDAÑA & VALLECILLO
Banco Popular Center
Suite 1031
Hato Rey, P.R. 00918
Tel. 758-7565
(signed illegibly)
GRACIANA M. GONZALEZ
HERNANDEZ
BAR ASSOC. NO. 10338

Stamp affixed
United States District Court
For the District of Puerto Rico
- CERTIFIED -
To be a correct translation prepared by:
Signed Illeg.
Certified Court Interpreter
Administrative Office of the
United States Courts